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### Memorandum opinion and judgment in the Circuit Court of Cole County, Missouri, Committee for Education Equality, et al., v State of Missouri, et al., Defendants No. CV190-1371CC and Lee;s Summit School District R-VII, et al., Plaintiffs, v. State of Missouri, et al., Defendants, No. CV190-510CC

Committee for Education Equality (Missouri)

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IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

COMMITTEE FOR EDUCATIONAL	)	
EQUALITY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. CV190-1371CC
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	
	)	
and	)	
	)	
LEE'S SUMMIT SCHOOL DISTRICT	)	
R-VII, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. CV190-510CC
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND  
JUDGMENT

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within the ages not in excess of twenty-one years as prescribed by law."<sup>1</sup>

"... [A]ll persons have a natural right to ... liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and entitled to equal rights and opportunity under the law...."<sup>2</sup>

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<sup>1</sup> Article IX, Section 1(a), Missouri Constitution.

<sup>2</sup> Article I, Section 2, Missouri Constitution.

### Summary of Decision

These consolidated cases present state constitutional challenges to various features of the present school finance system in Missouri. The Court conducted a three-week bench trial at which, in addition to actual testimony, the Court received into evidence over 400 exhibits and extensive deposition excerpts. After considering the evidence and the suggestions and authorities submitted by counsel for the parties, the Court has concluded that relief should be granted as hereinafter set forth.

The Court finds and concludes that the amount of money available for schools can and does make a difference in the educational opportunities that can be provided to Missouri children. The present Missouri school system does not provide an "equal opportunity" for each Missouri child as guaranteed by the Missouri Constitution. Vast disparities exist in the funding and resources available for education in the approximately 540 school districts in the Missouri school system -- with available annual revenues on a per pupil basis ranging from \$9,750.53 down to \$2,653.04, one of the most disparate situations of any state in the United States, and with facilities ranging from the "golden" to the "god-awful". Those disparities are not because of differing student needs, but instead are associated with local property wealth or are simply irrational.

Missouri's system of school finance as presently funded does not "maintain" a system of education providing for a "general diffusion of knowledge and intelligence" available to all Missouri



children at the level necessary in this era to "preserv[e] the rights and liberties of the people". Missouri does not provide an educational opportunity for each Missouri child "without regard to wealth, birth or accidental condition or circumstance" which is implicit in the Jeffersonian concepts ingrained in our Constitution. The present system of financing the public schools of Missouri does not pass constitutional muster.

Appended to this Memorandum Opinion and Order are various Appendices in which certain more detailed findings of fact and conclusions of law are set forth. The Findings of fact and conclusions of law set forth in the Appendices should be considered as a part of this Memorandum Opinion and Judgment as if fully set forth in the body hereof. Because of the scope of the evidence and the length of the trial, it is neither feasible nor needed that all evidence be summarized in this Memorandum Opinion and Judgment or in the Appendices. Suffice it to say, where evidence has been contradictory to the findings in this Memorandum Opinion and Judgment, the Court has concluded that the evidence to the contrary was not credible.

#### Parties

In these consolidated cases, the Court has had before it four petitions -- (i) the Second Amended Petition by the Plaintiff Committee for Educational Equality, a not-for-profit corporation (the "Committee"), its 89 participating school districts, 32 representative students from various districts who joined as parties by and through their respective parents as next friends,



and two taxpayers (collectively referred to as the "Committee Plaintiffs"); (ii) the Fourth Amended Petition by Lee's Summit R-VII School District, 35 other school districts and 19 representative students from various districts who joined as parties by and through their respective parents (collectively referred to as the "Lee's Summit Plaintiffs"); (iii) the First Amended Petition of the St. Louis City School District ("St. Louis") and five representative students from that district who joined as parties by and through their respective parents as next friends (collectively the "St. Louis Plaintiffs"); and (iv) the Petition of the Kansas City School District ("Kansas City").<sup>3</sup> The separate cases filed by the Committee Plaintiffs and the Lee's Summit Plaintiffs were consolidated. Thereafter, the St. Louis Plaintiffs and Kansas City were permitted to intervene and filed their respective petitions. There are approximately 94,000 eligible pupils within the 89 Committee School District Plaintiffs, approximately 81,000 eligible pupils within the Lee's Summit School District Plaintiffs, approximately 43,000 eligible pupils within the St. Louis School District and approximately 31,000 eligible pupils within the Kansas City School District. Appearing as Amici Curiae, in support of the positions advanced by the Committee Plaintiffs, were the Missouri National Education Association and the Missouri State Teachers Association.

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<sup>3</sup> The names of the respective school districts, representative students and taxpayers are set forth in findings in Appendix A.

Named as Defendants in the Petitions are the State of Missouri, the Governor of the State of Missouri, the Treasurer of the State of Missouri, the Commissioner of Administration of the State of Missouri, the Missouri State Board of Education (the "State Board"), the individual members of the State Board, the Missouri Department of Elementary and Secondary Education (the "DESE"), the Commissioner of Education of the State of Missouri (the "Commissioner") and the Attorney General of Missouri.<sup>4</sup> Each of the officials and members of the State Board were joined as parties in their official capacities.

The Ladue School District of St. Louis County ("Ladue"), the School of the Osage R-II School District of Miller County ("School of the Osage"), the Pattonville R-III School District of St. Louis County ("Pattonville"), and the Kirkwood R-VII School District of St. Louis County ("Kirkwood") (collectively "Intervenor-Defendants") were permitted to intervene as defendants to contest the relief requested by the Plaintiffs.<sup>5</sup> No students or other individual parties joined in the answers of the Intervenor-Defendants. There are approximately 2,800 eligible pupils within the Ladue District, 1,250 eligible pupils within the School of the Osage District, 6,000 eligible pupils within the Pattonville District and 4,750 eligible pupils within the Kirkwood District.

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<sup>4</sup> See also findings in Appendix A.

<sup>5</sup> See also findings in Appendix A.



### Constitutional Provisions

The Plaintiffs in their respective Petitions have invoked primarily the following provisions of the Missouri Constitution as the basis for their claims and the relief which they seek:

- (1) Article IX, Section 1(a), which provides as follows:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law."

- (2) Article I, Section 2, which provides as follows:

"That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design." (emphasis added)

- (3) Article III, Section 36, which provides as follows:

"All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:

First: For payment of sinking fund and interest on outstanding obligations of the state.

Second: For the purpose of public education.



Third: For the payment of the cost of assessing and collecting the revenue.

Fourth: For the payment of the civil lists.

Fifth: For the support of eleemosynary and other state institutions.

Sixth: For public health and public welfare.

Seventh: For all other state purposes.

Eighth: For the expense of the general assembly." (emphasis added)

- (4) Article IX, Section 3(a), which provides as follows:

"All appropriations by the state for the support of free public schools and the income from the public school fund shall be paid at least annually and distributed according to law."

- (5) Article IX, Section 3(b) which provides as follows:

"In the event the public school fund provided and set apart by law for the support of free public schools, shall be insufficient to sustain free schools at least eight months in every year in each school district of the state, the general assembly may provide for such deficiency; but in no case shall there be set apart less than twenty-five per cent of the state revenue, exclusive of interest and sinking fund, to be applied annually to the support of the free public schools."

Other constitutional provisions referred to or relied upon in the allegations in the Petitions include Sections 10 (due process) and 14 (open courts) of Article I, Sections 40(24) and 40(30) (special laws) of Article III, Sections 1(b), 2(a), 2(b), 3(a), and 5 of Article IX, Section 26(b) of Article VI, and Sections 11(a), 11(b) and 11(c) of Article X.

### History of Education in Missouri

The Court has had the benefit of expert testimony and documentary evidence with respect to the history of education and school finance in Missouri. The Court has carefully considered such expert testimony and documentary evidence, as well as the records and reports of the Missouri Constitutional Conventions and those historical facts of which this Court may properly take judicial notice. The Court finds the testimony of Dr. James N. Primm and Dr. Harold Young with respect to the history of education and school finance in Missouri and the testimony of Dr. Kern Alexander with respect to the history of Jeffersonian concepts in education to be credible.

The Court will not attempt to catalogue a complete history of the development of education and school finance in Missouri. In Appendix B there is set forth a historical chronology of those developments. The various Missouri constitutional provisions relating to education in the 1865, 1875 and 1945 Constitutions are set forth in Appendix C, along with pertinent excerpts from Constitutional Debates and Committee reports. The Court finds, from an analysis of the evidence, that in Missouri education is a fundamental right for children of school age.

### Overview of the Missouri System for Financing Public Education

The Missouri school finance system distributes state and federal funds, through various mechanisms, to the state's public elementary and secondary schools. In short, this finance system includes a variety of programs which are funded annually by the



General Assembly as well as funding from other sources. The General Assembly has enacted, as part of the Missouri school finance system, a statutory scheme of school financing, commonly referred to as the Foundation Formula set out in Section 163.031, RSMo 1986.

The Foundation Formula is one of four components of the Missouri School Foundation Program. From the monies appropriated by the General Assembly to fund the school foundation program, monies are first deducted to fund transportation costs, the exceptional pupil program and the gifted pupil program. Section 162.975, RSMo. These monies are distributed through various methods which do not take into consideration the property wealth (or lack thereof) of a local district or the funds which the local district might otherwise have available. The balance of the funds appropriated through the school foundation program are allocated to the school Foundation Formula.

The Missouri school finance system also includes a number of other funding programs which are appropriated annually by the General Assembly. The major funding programs include: (1) the foreign insurance company tax distributions (textbook), Sections 148.360 and 170.055, RSMo; (2) the "fair share" program (cigarette taxes), Section 149.015, RSMo; (3) the "excellence in education" programs (including career ladder, minimum salary, incentive grants and tuition reimbursement), Section 160.268, RSMo; and (4) federal funds which are distributed by the General Assembly. The methods of allocating these funds vary, but generally the methods do not



take into consideration the property wealth (or lack thereof) of a local district, the funds which the local district might otherwise have available or the needs of the students in the local district.

While there have been programs in the past providing state funds for certain school building costs, there are presently no statutes authorizing state aid for school building costs.

Local funding for school districts in Missouri is limited by Article X, Sections 11(a), 11(b) and 11(c) and Article VI, Section 26(B) of the Missouri Constitution, to the levy of local property taxes and the issuance of bonds not in excess of 10% of the assessed valuation of the county in which a district is located. The rate of a tax levy by school districts may be further limited by law. The state's method of allocating funds to school districts is based largely upon the property values of a school district and the amount of revenue a district received the previous year, both of which are unrelated to the educational needs of the students of the districts.

There are a number of other sources of funding for public schools including: (1) Proposition C sales tax monies which are considered by statute to be local funds; (2) property taxes upon state assessed utilities; (3) fines, forfeitures and escheats; and (4) federal funds which are not distributed by the state. Generally, the methods of distribution of these funds do not take into consideration the property wealth (or lack thereof) of a local district, the funds which the local district might otherwise have available or the needs of the students in the local district.

### Summary of Challenges to the Current Missouri Public School Finance System

Although numerous provisions of the Missouri Constitution are alleged to have been violated, the positions presented by Plaintiffs at trial may generally be characterized in terms of general challenges by the Committee Plaintiffs, the St. Louis Plaintiffs and Kansas City to the Missouri school finance system and challenges by the Lee's Summit Plaintiffs and Kansas City to the prior year constraint provision of the Foundation Formula. While the constitutionality of the entire Missouri public school finance system is at issue, a great deal of the trial testimony was specifically devoted to the operation and effect of the Foundation Formula.

School districts which meet the requirements of Section 163.031, RSMo, are entitled to receive state aid through the Foundation Formula. The Foundation Formula contains six major components: (1) the minimum guarantee; (2) deductions from the minimum guarantee; (3) the guaranteed tax add-on; (4) the cost of education index (which is inoperable in the current formula); (5) the prior year constraint; and (6) the provision of a minimum per pupil amount to all school districts. These features of the current Foundation Formula are explained in more detail in the findings set forth in Appendix D.

### The Missouri School Finance System in Operation

In the 1989-90 school year there were approximately 757,000 eligible pupils in Missouri public schools and the number increased to approximately 762,000 during the 1990-91 school year. In the



1989-90 school year there were 544 school districts in Missouri, two of which were Special School Districts. The number of districts decreased by one during the 1990-91 school year. (Exhibits 212 and 367)

By statute the State of Missouri has created a system of public schools in which the quality of a child's education is determined by happenstance of wealth, birth, or accidental condition or circumstance.

A child's education in Missouri is a function of the wealth of the local school district. The extent and degree of diffusion of knowledge is determined and predicated on local wealth. A high and very significant correlation exists among all school districts between state and local revenues per pupil and equalized assessed valuation of property per pupil (0.62107). There is an even higher correlation between the statutorily determined measure of local fiscal capacity (deductibles in the Foundation Formula) and state and local revenues per pupil (0.63440). Thus, the wealth of the local community is the primary and predominant determinant of the quality of a child's education in Missouri.

The privileged children who happen to reside in the wealthy school districts have vastly greater funds expended on them each year from state and local resources than do children in the poorer school districts.



For fiscal year 1990<sup>6</sup> the 10 percent of the state's children attending school in the wealthiest school districts received \$415,517,738 in state and local funds for their education while the 10 percent of the state's students in the poorest school districts received only \$261,036,898 for their education, a difference of \$154,480,840 per year.

The 20 percent of students attending school in the wealthiest school districts received a total of \$779,426,870 in state and local funds in fiscal year 1990 while the 20 percent of students attending school in the poorest school districts received only \$518,939,220, a difference of \$260,487,650 per year.

Various statistical measures of the funding of Missouri's school districts confirm the degree and extent of these wide inequalities. For example, the maximum range between the richest and poorest school districts in the state is among the greatest in the nation, ranging from a high of \$9,750.53 per eligible pupil in revenues in the Clayton School District to a low of \$2,653.04 in Laclede County C-5 School District.<sup>7</sup> If one assumes a classroom unit size of 25 pupils, Clayton has a total revenue of \$243,763 available to expend per classroom, while Laclede County C-5 has only \$66,326. Thus, Clayton has \$177,437 more per year to expend on each classroom than does Laclede County C-5.

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<sup>6</sup> Revenue and expenditure figures referred to in this Memorandum Opinion and Judgment and Appendices are for the fiscal year 1990, i.e., the 1989-90 school year, unless otherwise indicated.

<sup>7</sup> Current expenditures, as distinguished from revenues, range from \$8,725.68 per eligible pupil in the Clayton School District to \$2,277.58 per eligible pupil in the Ripley County R-III School District.

Equity measures commonly used to assess the equality of the distribution of a state's resources for public schools<sup>8</sup> indicate Missouri schools are among the most inequitably financed in the nation<sup>9</sup> and the disparities have intensified over the last decade.

Based on the state and local revenues available for each school district, the coefficient of variation (standard deviation divided by the mean) nearly doubled between 1980 and 1990, from 17.37 to 31.58. The Federal Range Ratio showed a similar increase in the disparate allocation of revenues among school districts, increasing from 0.62 in fiscal year 1980 to 1.07 in fiscal year 1990. This ratio is over four times the permissible limits allowed for a state to meet federal statutory and regulatory standards to qualify on the disparity test for purposes of Federal Impact Aid, P.L. 81-874.

The State Board, by formal action in December of 1991, adopted the Federal Range Ratio as the minimal equity test for school financing in Missouri (Exh.102<sup>10</sup>). Both Commissioner of Education Bartman and Dr. Jones (who is in charge of statistical data at the

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<sup>8</sup> The Range, the Restricted Range, the Federal Range Ratio, the Coefficient of Variation, the Gini Index and the McLoone Index are generally accepted measures for determining school finance equity. Testimony of Dr. Robert Bartman, Dr. John Jones and Dr. Kern Alexander. See Exhibit No. 502 for definitions of these equity tests.

<sup>9</sup> See, e.g., Exh. 132 identified by Dr. John Jones of the DESE indicating at page 28 that Missouri is the third most disparate. See, also, Exh. 555 identified by Intervenor-Defendants' witness Dr. Robert Jewell as the source of his national statistics and which indicated that the coefficient of variation reflecting disparities in Missouri was next to the highest in the nation.

<sup>10</sup> In addition to the adoption of the Federal Range Ratio test, the State Board in its December 1991 formal action also determined that any new formula (a) should be less complicated than the current formula and (b) should provide, whenever the formula requires more or less money than is appropriated, for a proration after entitlements and before deductions. Exh. 102. The Court finds the Federal Range Ratio standard, as well as the foregoing guidelines (a) and (b), to be reasonable.



DESE) testified that the present system of school finance in Missouri as presently funded does not meet the school finance equity test adopted by the State Board.

All relevant standard measures of equity in educational funding among all the school districts in Missouri clearly and consistently indicate that Missouri funding for its public schools is highly disequalized and is getting worse.<sup>11</sup>

The Court has heard evidence relative to the facilities and equipment available in different school districts in Missouri. The facilities and equipment appear to be at least as disparate between Missouri school districts as the resources available for current operations. School districts with poor facilities and equipment must expend more current operating monies for maintenance, and the evidence uniformly demonstrated that those districts with poorer facilities and equipment had less current funds available and were not able to adequately maintain such existing facilities and equipment. School facilities in Missouri go from the "golden" to the "god-awful". One only has to compare the facilities and equipment at the South Callaway R-II School District at Mokane, which was a poor district before the Union Electric nuclear power plant was constructed in the district, with the facilities and

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<sup>11</sup> The increasing disparity in funding among Missouri school districts is further confirmed by the statistical analysis called the Gini Coefficient. Using all the school districts for the years from 1980 to 1990, the Gini indicates an increase in inequality, from 0.09 in 1980 to 0.15 in 1990 (as the coefficient increases the equalization of funds decreases). This movement from a very disequalized system in 1980 to even greater disparity in 1990 is further confirmed by the McLoone Index which measures the equality of funding for the lower one-half of the students in the state. By this measure the funding for the pupils in the poorest districts has markedly worsened. The McLoone Index was 0.91 in 1980 and by 1990 it had fallen to 0.88 (the lower the index the greater the inequality).



equipment in the Osage County R-III School District, the districts being only four miles apart, to come to that conclusion. From the evidence, it is clear that better school facilities and equipment make for better learning opportunities and experiences. Computers for student use and training in schools in this era have become essential, but many schools simply do not adequately provide these essentials. The Court even heard evidence that the lack of an adequate electrical wiring system in one school district precluded the use of computers which were otherwise available. In some poorer school districts, such as the Willow Springs School District, even if a bond issue for the maximum constitutional (Article VI, Section 26(b)) debt of ten percent of the district's assessed valuation would be approved, such would not generate sufficient funds to fund needed buildings.

Thus, the present system of financing public education in Missouri fails to provide children of substantially equal age, aptitude, motivation and ability with substantially equal educational resources and opportunities, including but not limited to teaching staff, curriculum, educational services, equipment and facilities. The amount of revenue provided by the state pursuant to the Foundation Formula does not equalize, as to need, the amount of money available to a school district for school purposes.

Since the basic structure of the present Foundation Formula was adopted in 1977, except for the first few years, the level of state funding through the formula has not risen at the rate anticipated at the time the formula was adopted. Consequently,

those factors within the formula tending to promote equity in school funding have not operated as intended. When funding through the formula remains at a constant or only slightly increased level, school districts with increasing student populations are generally hurt because of the prior year constraint provisions, and equity as to those districts worsens. The prior year constraint, however, at a time when funding through the formula remains constant or at only a slightly increased level, operates to allow districts with decreasing student populations to better maintain existing school programs. Rural districts in many parts of Missouri have decreasing student populations and also have low property wealth so they are more dependant upon state aid than many other districts. A removal of the prior year constraint for the rural poor districts with decreasing populations without additional state funding for those districts would prove devastating for some of those districts and their students -- with the loss on a per student basis running as high as \$1,000 per student annually in some districts. Thus, while the prior year constraint perpetrates inequities for many districts, its removal without additional funding or changes in the funding system would perpetuate yet more inequities upon many other districts. Therefore, the removal of the prior year constraint without more funding would not solve the infirmities in the Missouri school finance system.

Since the enactment of the basic structure of the present Foundation Formula in 1977, Missouri has undergone changes in valuation levels for local property tax assessments; there has been



a reassessment program and Proposition C has been adopted. While some changes in the Foundation Formula have been made in response to the changes, the Foundation Formula has in the process become so complex that few people understand its workings and no one now knows what a particular change in funding will effect without the aid of a computer.<sup>12</sup>

The present Foundation Formula operates irrationally when funded at the level at which it is now being funded. Full funding of the Formula over a period of time would also be irrational since such would be self propagating and in a relatively short period of time would require the utilization of virtually all state revenues. In fiscal year 1990, the Foundation Formula was funded at a level of \$849 million and full funding of the Formula would have required \$1,660 million. Assuming full funding of the Foundation Formula in Fiscal Year 1990 and subsequent years, the amount required to fully fund the Foundation Formula would rise to \$2,528 million in Fiscal Year 1992, to \$3,400 million in Fiscal Year 1994 and to \$4,211 million in Fiscal Year 1996 without consideration of actual additional needs (Exh.150). Other facets of the Formula, such as effecting deductions at 57 percent and the minimum guarantee of approximately \$283 per student without reference to needs, have no rational basis. The Court finds the Foundation Formula, as presently drawn, is irrational.

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<sup>12</sup> "It will be of little avail to the people that laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow." James Madison, Federalist Papers (1788).

The problems with the Foundation Formula are further compounded by the fact that only a portion of the funds appropriated by the General Assembly flow through the Foundation Formula. Many other funds, such as the "fair share" program (cigarette taxes - Section 149.015, RSMo) and the "textbook" funds (foreign insurance company taxes - Sections 148.360 and 170.055, RSMo), are allocated and distributed without reference to either the needs of students or the needs of local districts. Those districts which have more resources available receive under many programs the same amount of dollars per student as those districts with extremely limited resources. And the same is true of Proposition C monies which are distributed on a per pupil basis rather than through the Foundation Formula.

Consequently, a "cure" of the constitutional infirmities of the Foundation Formula is not to be found by a change of only a single element of the Foundation Formula (e.g., the Prior Year Constraint), by further "refinement" or "tinkering" with an already overly complex formula to make it even more complex, by only increasing the amount of money flowing through the Formula, or by only looking at the monies which presently flow through the Foundation Formula.<sup>13</sup>

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<sup>13</sup> It is not the province of this Court to "write" a new Foundation Formula in this Memorandum Opinion and Judgment. Hopefully though, the findings and conclusions herein will be of some assistance as the General Assembly faces its tasks of addressing the system of school funding in Missouri. The Court was impressed with the ability of many of the experts (including Dr. Bartman and Dr. Jones from the DESE) who testified for the Plaintiffs at trial. Because of their familiarity with the existing system, its faults and needs, they may be of assistance in formulating the necessary legislation to comply with this Memorandum Opinion and Judgment. The Court notes, for example, that it was impressed with the simplicity and flexibility of the Formula suggested by Dr. Leven in his testimony. Other experts who testified, if asked, may be able to quickly suggest other solutions for consideration. A comprehensive consideration of school funding and the sources of funding in



The inequalities in funding between rich and poor cannot be justified by asserting that the poor have brought the plight upon themselves by putting forth low local fiscal effort to support their own schools. In the first place, it is the school children whose rights are impacted by the inequities which exist, and the school children have no power to increase or decrease the local fiscal effort. Furthermore, the data shows that the disparity in funding among school districts is primarily attributable to local wealth and not to choice, improvidence or lack of aspiration of the citizenry in poor school districts. See Appendix E for additional findings relative to inequities, local effort and student needs.

The current state funding system for education in Missouri does not provide sufficient revenue to meet the educational needs of children in the State of Missouri. The State Board acting under its constitutional powers for the supervision of education in Missouri, has adopted its "Model School Concept" to calculate what is required to fund a minimally acceptable program of education in Missouri. The "Model School Concept" assumes (a) that school monies are equally distributed among school districts (which has certainly not occurred) and (b) that optimally efficient school sizes exist of 1,200 students in a high school, 600 students in a middle school and 600 students in an elementary school ((i) which is not progressively feasible when one considers the numbers, (ii) which does not exist at the present time and (iii) which because of population sparsity factors could not in reality be achieved).

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Missouri is needed, and more than minor modifications to the existing Formula will be required.

Consequently, in application, much more than \$445 million is now needed annually to provide for the minimally adequate level of educational services contemplated by the Model School Concept.

The State's failure to fund free public school exists despite the fact that Missouri has adequate capacity to increase funding of education. Missouri ranks 49th among the states in current expenditures for public schools as a percent of personal income -- so Missouri's unused capacity is greater than all but one other state. Testimony of Dr. Alexander and Dr. Phares; Exhibits 548, 624 and 625. In order to "level up" the current expenditures per pupil in Missouri to the national average of \$4,975, additional funds in the approximate amount of \$957 million would be needed.<sup>14</sup> Exhibit No. 513. See Appendix F for further findings with respect to the amount of school funding in Missouri.

The Court specifically finds the testimony and documentary exhibits presented by Dr. Robert Bartman, Dr. John Jones, Dr. Kern Alexander, Dr. James N. Primm, Dr. Harold Young, Dr. John Augenblick, Dr. Van Mueller, Dr. Donald Phares, Dr. Alfred Hess, Dr. Charles Leven and Dr. Jim C. Fortune to be credible.

The Defendants and the Defendant-Intervenors presented evidence through Dr. Eric Hanushek, Dr. Herbert Walberg, Dr. John Alspaugh and Dr. Robert Jewell -- the general gist of which was

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<sup>14</sup> Only 20 out of the 542 Missouri school districts in 1989-90 had expenditures on a per pupil basis above the national average of \$4,975. Two of those above the national average were Kansas City and St. Louis which received substantial desegregation funding; two others were the Waynesville and Knob Noster School Districts which received substantial Federal impact monies; and two others were the Intervenor-Defendants Ladue and Pattonville. Exhibit No. 513. The Court by noting the amount that would be needed to "level up" to the national average does not hold that such additional amount of funding is constitutionally required.



that monies do not make a difference in providing an education; hence it does not matter whether there are inequities or inadequacies in public school funding. This is directly contrary to testimony of Commissioner of Education Robert Bartman and to the determinations and positions taken by the State Board as reflected in the evidence herein. It is also directly contrary to the real positions of the Intervenor-Defendants herein for they would have no interest in this litigation nor would they be paying for litigation costs if it were not for the purpose of preserving the larger amount of school funds on a per pupil basis.

With respect to providing educational opportunities, there is simply no "free lunch".<sup>15</sup> Providing educational services costs money. An inequitable and inadequate allocation of funds within the public school system of Missouri results in inequitable and inadequate educational services and inequitable and insufficient educational opportunities. See Appendix G for further findings in this connection.

Dr. Bartman and Dr. Alexander stressed the need for an adequate education for the children of Missouri to be able to compete in a world economy. Dr. Bartman discussed the 1989 Final Report of the Governor's Advisory Council on Literacy, which had been formed by Governor Ashcroft and of which former Secretary of State Blunt was Chairman and Dr. Bartman was Vice-Chairman. That report concluded that by the year 2000 a majority of all new jobs

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<sup>15</sup> This is true, both literally and figuratively. School food service revenues from local sources for the 1989-90 school year involved approximately \$75 million from local sources, \$3.2 million from state sources and \$63 million from Federal sources. Even the school lunch program is not in reality a "free lunch."

in Missouri will require a post-secondary education and that at the present rates there will not be sufficiently educated and trained young people to fill the jobs. Exhibit No. 503.

The words of Mr. Opie speaking at the Constitutional Convention in favor of Missouri's present Education Article on April 28, 1944, during World War II prophetically spoke of what "other governments in this world" would be doing:

"I think we ought to support the report of this Committee and look to the future, because if we don't, the citizens of Missouri will be left [at the] ... switch." Transcript of Constitutional Debates, p. 2330.

Dr. Bartman adopted as his own testimony an excerpt from A Nation At Risk (1983) which this Court finds to be factually correct:

"The world is indeed one global village. We live among determined, well-educated, and strongly motivated competitors. We compete with them for international standing and markets, not only with products but also with the ideas of our laboratories and neighborhood workshops. America's position in the world may once have been reasonably secure with only a few exceptionally well-trained men and women. It is no longer."

\* \* \*

"If only to keep and improve on the slim competitive edge we still retain in world markets, we must dedicate ourselves to the reform of our educational system for the benefit of all -- old and young alike, affluent and poor, majority or minority. Learning is the indispensable investment required for success in the "information age" we are entering."

\* \* \*

"A high level of shared education is essential to a free, democratic society and to the fostering of a common culture, especially in a country that prides itself on pluralism and individual freedom."

\* \* \*

"Education helps form these common understandings, a point Thomas Jefferson made long ago in his justly famous dictum:

I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not



enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion."

"Part of what is at risk is the promise first made on this continent: All, regardless of race or class or economic status, are entitled to a fair chance and to the tools for developing their individual powers of mind and spirit to the utmost. This promise means that all children by virtue of their own efforts, competently guided, can hope to attain the mature and informed judgment needed to secure gainful employment and to manage their own lives, thereby serving not only their own interests but also the progress of society itself." Exhibit No. 148.

Missouri is indeed a state at risk if it does not fulfill its commitment to public education contained in the Missouri Constitution.

The Twenty Five Per Cent  
of State Revenue Requirement

A separate issue has been raised by the Committee Plaintiffs as to whether the present level of funding of public education in fact meets the requirement as set forth in Section 3(b) of Article IX of the Missouri Constitution -- "... but in no case shall there be set apart less than twenty-five per cent of the state revenue, exclusive of interest and sinking fund, to be applied annually to the support of the free public schools." The other Plaintiffs and the Intervenor Defendants do not contest the assertions of the Committee Plaintiffs that in fact the requisite 25% is not being set aside for free public education. The Defendants contest those assertions.

Various financial reports of the State Auditor, the Office of Administration and of the DESE are in the record, including Audit

Reports setting forth the annual calculations by the State Auditor of "total state revenues" for purposes of the Hancock Amendment. The Committee Plaintiffs and the Defendants have each submitted proposed findings to the Court setting forth their respective positions.<sup>16</sup> The initial question of determining what constitutes "state revenues" within the meaning of Section 3(b) of Article IX is somewhat similar to the question of determining what constitutes "total state revenues" within the meaning of the Hancock Amendment (Section 17(1) of Article X), although there are significant differences. The Hancock definition of state revenues excludes federal revenues; the Education Article definition does not. The Hancock definition of state revenues excludes the amount of any credits based on actual tax liabilities; the Education Article does not. State ex rel. Sikeston R-VI School District v. Ashcroft, 828 S.W.2d 372 (Mo. banc 1992), teaches that the term "state revenues" in the context of the Education Article is to be broadly read and is not limited to monies that are appropriated.

The provisions of Proposition C declare that the sales and use tax revenues generated under that Proposition "shall be deemed local tax revenue". The Committee Plaintiffs assert that those revenues should not be counted as either "state revenues" or in the "twenty-five percent" set aside, while the Defendants assert the contrary.

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<sup>16</sup> The Committee Plaintiffs postulated shortfalls of over \$500 million in meeting the "twenty-five" percent requirement in both fiscal years 1990 and 1991. Much of the postulated shortfalls is dependent upon whether Proposition C monies, nonappropriated revenues of state universities and colleges and unemployment taxes are considered to be "state revenues" within the meaning of Section 3(b) of Article IX.



In response to the Judgment which is now entered in these consolidated cases, the General Assembly will be considering revisions to the present system of school funding in Missouri. How the General Assembly addresses those issues, including inter alia, revisions to the Foundation Formula, the methods and sources of funding public schools in Missouri, the treatment of Proposition C revenues and the level of appropriations for public education in Missouri, could moot the issue raised by the Committee Plaintiffs that there is not being in fact the minimum of "twenty five percent of state revenue, exclusive of interest and sinking fund," being "set apart" for public education. The Court believes, therefore, that that issue should not now be reached, but instead that issue is severed and reserved for later determination as provided in the Judgment portion of this Memorandum Opinion and Judgment.

#### CONCLUSIONS OF LAW

The Court concludes that it has jurisdiction over the parties and the subject matter; that either the Plaintiff school districts or the Plaintiff students or the Plaintiff taxpayers have standing to raise and litigate the issues which are presented herein; and that the Plaintiffs have presented justiciable issues which are ripe for determination.

The Constitution of Missouri sets forth the Jeffersonian concept that education is fundamental to democracy and that the state should assume the primary educational role. The constitutional language which appears in Article IX, Section 1(a), derives from the writings and principles of Thomas Jefferson. The

educational provisions of the Constitutions of California and Texas contain similar Jeffersonian language, and the Supreme Courts in each of those states struck down disparate and inequitable school finance systems. See, Serrano v. Priest, 487 P.2d 1231 (Cal. Bank 1971), and 557 P.2d 929 (Cal. Bank 1976); and Edgewood Independent School District v. Kirby, 777 S.W.2d 391 (Texas 1989), and 804 S.W.2d 491 (Texas 1991). None of the cases from other states cited by Defendants or the Intervenor-Defendants where school finances challenges have been rejected involved a construction of the Jeffersonian language which appears in the educational provisions of the Missouri, California and Texas Constitutions.

Educating the children of Missouri is essential to the people of this state, and the State of Missouri through the General Assembly has the duty to provide for it. Article IX, Section 1(a), of the Missouri Constitution provides:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law."

Article IX, Section 1(a), mandates a state school system. The creation of local school districts has been effected through action by the General Assembly to attempt to create a state system.

By reason of Article IX, Section 1(a), the State of Missouri is required to maintain a system of free public schools which will provide for that "general diffusion of knowledge and intelligence" which is necessary in any given era to preserve the "rights and



liberties of the people." It is not sufficient that a system be only "establish[ed]", it is constitutionally essential, as well, that it be "maintain[ed]" at an ever evolving level which will assure the "preservation of the rights and liberties of the people."

The State of Missouri's legal obligation to maintain the elementary and secondary public schools of Missouri, by providing adequate financing to the free public schools, is given high priority by the Missouri Constitution, second in importance only to payment of sinking fund and interest on outstanding obligations of the state. Article III, Section 36, Missouri Constitution.

The Supreme Court of Missouri has heretofore concluded that education in Missouri is "vital" (State ex rel. Sikeston R-VI School District v. Ashcroft, 828 S.W.2d 372 (Mo. banc 1992)) and "fundamental" (Concerned Parents v. Caruthersville School District, 548 S.W.2d 554 (Mo. banc 1977)). This Court is bound by those decisions. The Court concludes that education is a fundamental right in Missouri.<sup>17</sup>

The Constitution of Missouri guarantees to each child in Missouri "equal rights and opportunity under the law." Article I, Section 2 of the Missouri Constitution provides:

"That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, and the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal

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<sup>17</sup> This Court's own consideration of the history of education in Missouri (Appendix B) and the constitutional development of the education rights which are embedded in the Missouri Constitution (Appendix C) have led this Court to the same independent conclusion.

and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer the security, it fails in its chief design."

"Equal ... opportunity under the law" includes equal educational opportunities.

The Missouri Constitution not only incorporates the Equal Protection principles contained in the Fourteenth Amendment to the United States Constitution, it also additionally makes it a part of Missouri's organic law that all "persons" (i.e., school children) "are entitled to equal ... opportunity." In this context, the Constitutional requirement of "equal ... opportunity" has particular meaning -- for a child with yearly revenues of \$2,653.04 available to provide for his or her education cannot be said to have an "equal ... opportunity" with the child for whom \$9,750.53 is available annually. The existing school finance system does not provide an "equal ... opportunity" for all school age children as is required by Article I, Section 2, of the Missouri Constitution.

If the familiar principles applied at a Federal level with respect to Equal Protection questions are here applied, then the applicable standard of review would be the "strict scrutiny" test inasmuch as a fundamental right is involved. When a "strict scrutiny test is applied to the evidence here, the existing school finance system in Missouri does not pass constitutional muster and must be given a failing grade. But even if the existing school finance system is measured against the less stringent "rational"



basis standard, upon the record here it cannot pass Equal Protection muster.

The Constitution of Missouri requires that the State of Missouri provide and fund a system of free public schools so that every child in Missouri will be afforded substantially equal educational opportunities without regard to place of residence, wealth or other economic circumstance. A child living in a poor school district must have the same opportunity to receive substantially the same education as a child living in a rich district.

A deviation from equality on a per student basis in the distribution of the total resources (both state and local) among the schools in the Missouri school system should not be permitted except to provide resources either (a) to the least advantaged or (b) for specially identified educational needs. There are greater costs involved in educating disadvantaged or "at risk" children.

The state must provide adequate funds to "maintain" a system of education providing a "general diffusion of knowledge and intelligence" at the level which is necessary in this era to "preserv[e] the rights and liberties of the people."

The system of public schools in Missouri is a state system, not separate district systems. "In Missouri the property of school districts acquired from public funds is the property of the State, not the private property of the school district in which it may be located ...." State ex rel. Normandy School District v. Small, 356 S.W.864, 871 (Mo. banc 1962). When a district collects

taxes from within a district, those monies become public monies and not the private property of the school district. School District of Oakland v. School District of Joplin, 102 S.W.2d 909 (Mo. 1937).

The duties of the General Assembly and hence the State of Missouri to equitably and adequately fund a public school system in Missouri cannot be delegated in a manner so as to avoid responsibility for all parts of the system. The Constitution does not prescribe any particular organizational pattern, and the number, size and location of school districts is the result of the exercise of legislative prerogatives by the General Assembly. The Constitution places limits on the taxing authority of school districts, and those limits may be further limited by statute. Article X, Sections 11(b), 11(c) and 10(c), Missouri Constitution. While there are total revenue and spending limits imposed by the Hancock Amendment upon the state, there are no constitutional limits upon that part of the state revenues that may be devoted to free public education.

See Appendix H for additional conclusions of law.



### JUDGMENT

IT IS ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

1. The Court determines and declares that the Missouri school finance system at the level at which it is presently funded violates the provisions of Section 1(a) of Article IX, Section 2 of Article I, Section 36 of Article III and/or Section 40(24) and 40(30) of Article III of the Missouri Constitution.

2. The Court specifically determines and declares that the Foundation Formula contained in Section 163.031, RSMo, at the level at which it is presently funded is unconstitutional because of the provisions of Section 1(a) of Article IX, Section 2 of Article I, Section 36 of Article III and/or Sections 40(24) and 40(30) of Article III of the Missouri Constitution.

3. The Court determines and declares that the General Assembly and hence the State of Missouri is under an enforceable duty to establish and maintain a system of free public education in Missouri which is available to every child in Missouri.

4. The Court determines and declares that the General Assembly and hence the State of Missouri that the system of free public education which is established and maintained in Missouri must provide a child living in a poor school district the same opportunity to receive substantially the same educational as a child living in a rich district, and that deviations from equality in the distribution of resources are not permissible except to provide resources either (a) to the least advantaged or (b) for specially identified educational needs. The Court further

determines and declares that the present system of funding public schools in Missouri does not comport with the requirements heretofore declared in this paragraph.

5. The Court determines and declares that the General Assembly must provide adequate funds to establish and maintain a system of public education at the elementary and secondary level providing a general diffusion of knowledge and intelligence at the level necessary in this era to preserve the rights and liberties of the people. The Court further declares that the State does not meet the requirements hereinabove determined and declared in this paragraph.

6. In order to allow time for the General Assembly to enact a constitutionally sufficient plan for funding public education in Missouri and also to allow time for appellate review of this Memorandum Opinion and Judgement, the effectiveness of the foregoing paragraphs one through five are stayed until 90 days after adjournment of the First Regular Session of the 87th General Assembly. The Court reserves the authority to modify the stay upon prior notice to the parties.

7. The Defendants shall proceed with all deliberate speed to formulate and establish a system of public school finance in Missouri which comports with this Memorandum Opinion and Judgment. The Court is aware of the complexities of the task and realizes it cannot be accomplished overnight. Until the constitutional infirmities in the funding of public education in Missouri are corrected, thousands of Missouri school children are being deprived



of their rights under the Missouri Constitution. Prompt action is therefore urgently needed.

8. The Court severs and reserves for later decision the issue of whether or not the current level of funding of public education in Missouri meets the minimal constitutional level of 25% of state revenues as required by Section 3(b) of Article III of the Missouri Constitution. Following the adjournment of the First Regular Session of the 87th General Assembly, any party hereto may move that said issue be further considered by the Court.

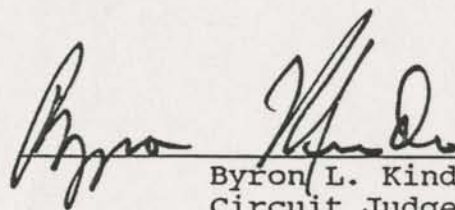
9. This Court retains jurisdiction for the purpose of enforcing this Judgment, including, if needed, the granting of injunctive relief, the appointment of a qualified educator(s) as a master(s) or the utilization of such other equitable and legal powers as may be just and proper.

10. This Memorandum Opinion and Judgment is determined to be an adjudication of the claims of the parties set forth in their respective pending pleadings and any relief which has been requested and not granted or reserved for later decision herein is hereby denied.

11. The Court reserves for later decision the assessment of costs and the claims for attorneys fees.

12. The Court determines pursuant to Rule 74.01, Missouri Rules of Civil Procedure, that there is no just reason for delay in the entry of a final judgment herein and this Judgment is therefore determined to be a final judgment for purposes of appeal as to

those claims and issues decided and not reserved for later adjudication.



Byron L. Kinder  
Circuit Judge

Dated: January 15, 1993



TABLE III - DISTRICTS TRANSPORTING 200-299 PUPILS (25 Districts)

District	No. of Pupils Transported	Approx. Yearly Mileage	Expenses for Daily Bus Routes	Cost Per Pupil Transported	Cost Per Mile
Mont Vernon	208	21,420	\$ 22,080.00	\$ 106.15	\$ 1.03
Barnstead	222	30,420	45,947.00	206.97	1.51
Dunbarton	224	44,100	28,620.00	127.77	0.65
Tamworth	224	46,260	33,500.00	149.55	0.72
East Kingston	226	29,520	17,640.00	78.05	0.60
Milan	226	50,580	23,304.60	103.12	0.46
Westmoreland	228	29,160	19,900.00	87.28	0.68
Andover	232	30,240	23,630.00	101.85	0.78
Chester	242	25,920	16,004.00	66.13	0.62
Sunapee*	242	19,980	14,572.00	60.21	0.73
Newmarket	248	9,540	15,000.00	60.48	1.57
Fremont	252	27,720	20,680.00	82.06	0.75
Brentwood	256	20,880	15,750.00	61.52	0.75
Holderness	259	37,260	27,062.00	104.49	0.73
Littleton	260	47,880	48,184.60	185.33	1.01
Kensington	269	36,900	25,380.00	94.35	0.69
Nottingham	269	43,200	30,400.00	113.01	0.70
Brookline	270	32,220	26,728.00	98.99	0.83
Wilton	270	26,280	20,466.20	75.80	0.78
Alton	272	32,040	34,865.00	128.18	1.09
Epsom	274	28,440	19,678.67	71.82	0.69
Wakefield	275	49,500	49,572.00	180.26	1.00
Pittsfield	279	21,960	17,035.00	61.06	0.78
Plainfield	286	47,340	22,304.34	77.99	0.47
Greenland	292	11,160	18,500.00	63.36	1.66
TOTAL PUPILS CARRIED	6,305				
TOTAL MILEAGE		799,920			
TOTAL COST			\$636,803.41		
AVERAGE COST PER PUPIL				\$ 101.00	
AVERAGE COST PER MILE					\$ 0.80

TABLE IV - DISTRICTS TRANSPORTING 300-499 PUPILS (24 Districts)

District	No. of Pupils Transported	Approx. Yearly Mileage	Expenses for Daily Bus Routes	Cost Per Pupil Transported	Cost Per Mile
Deerfield	307	40,500	\$ 27,650.64	\$ 90.07	\$ 0.68
Gilmanton	320	56,160	32,317.00	100.99	0.58
Rollinsford	320	35,640	29,400.00	91.88	0.82
Gorham*	336	36,180	22,023.00	65.54	0.61
Bethlehem	338	37,260	52,584.00	155.57	1.41

**APPENDIX A TO MEMORANDUM  
OPINION AND JUDGMENT**

**PARTIES TO THE  
CONSOLIDATED CASES**

This Appendix A lists the parties in these consolidated cases.

**Plaintiffs:**

1. **Committee Plaintiffs:**

- a. Committee for Educational Equality, a not for profit corporation.
- b. The 89 school districts, with their postal service addresses shown in parentheses, included within the Committee Plaintiffs are the Adair County R-I School District (Novinger), Alton R-IV School District (Alton), Ava R-I School District (Ava), Bakersfield R-IV School District (Bakersfield), Bell City R-II School District (Bell City), Belleview R-III School District (Belleview), Bradleyville R-I School District (Bradleyville), Cabool R-IV School District (Cabool), Campbell R-II School District (Campbell), Caruthersville 18 School District (Caruthersville), Cass County R-VIII School District (Creighton), Centerville R-I School District (Centerville), Clarkton C-4 School District (Clarkton), Clearwater R-I School District (Clearwater), Community R-VI School District (Ladonia), Cooter R-IV School District (Cooter), Crystal City School District (Crystal City), Delta



R-V School District (Delta), Dexter R-XI School District (Dexter), Dixon R-I School District (Dixon), Doniphan R-I School District (Doniphan), East Carter County R-II School District (Ellsinore), East Newton R-VI School District (Granby), Eminence R-I School District (Eminence), Fairview R-XI School District (West Plains), Frances Howell R-III School District (St. Charles), Greenville R-II School District (Greenville), Hartville R-II School District (Hartville), Houston R-I School District (Houston), Iberia R-V School District (Iberia), Jennings School District (St. Louis County), Junction Hill R-II School District (West Plains), Laquey R-V School District (Laquey), Lesterville R-IV School District (Lesterville), Lewis County C-I School District (Ewing), Licking R-VIII School District (Licking), Lincoln County R-IV School District (Winfield), Manes R-V School District (Mountain Grove), Mansfield R-IV School District (Mansfield), Marquand R-VI School District (Marquand), Meadow Heights R-II School District (Patton), Meramec Valley R-III School District (Pacific), Miami R-I School District (Amoret), Miller R-II School District (Miller), Morgan County R-II School District (Versailles), Mountain View-Birch Tree R-III School District (Mountain View),

Naylor R-II School District (Naylor), Neelyville R-IV School (Neelyville), Newburg R-II School District (Newburg), Nixa R-II School District (Nixa), North Callaway County R-I School District (Kingdom City), Oak Ridge R-VI School District (Oak Ridge), Oran R-III School District (Oran), Perry County 32 School District (Perryville), Phelps County R-III School District (Edgar Springs), Pleasant Hope R-VI School District (Pleasant Hope), Pulaski County R-II School District (Crocker), Raymondville School District (Raymondville), Republic R-III School District (Republic), Richards R-V School District (West Plains), Richland R-I School District (Essex), Risco R-II School District (Risco), Ritenour School District (St. Louis County), Schell City R-I School District (Schell City), Schuyler County R-I School District (Queen City), Scott City R-I School District (Scott City), Scott County R-II School District (Chaffee), Scott County R-V School District (Sikeston), Seymour R-II School District (Seymour), Sikeston R-VI School District (Sikeston), South Iron County R-I School District (Annapolis), Southwest Barry County R-V School District (Washburn), St. Charles R-VI School District (St. Charles), St. Clair R-XIII School District (St. Clair), St. Elizabeth R-IV School



District (St. Elizabeth), Strafford R-VI School District (Strafford), Success R-VI School District (Success), Summersville R-II School District (Summersville), Thornfield R-I School District (Thornfield), Twin Rivers R-X School District (Broseley), Union R-XI School District (Union), Valley R-VI School District (Caledonia), Van Buren R-I School District (Van Buren), Washington School District (Washington County), Wellston School District (St. Louis County), Willow Springs R-IV School District (Willow Springs), Winona R-III School District (Winona), Worth County R-III School District (Grant City), and Wright City R-II School District (Wright City).

- c. The student Plaintiffs included within the Committee Plaintiffs are representative students at various grade levels from those school districts which have joined as Committee Plaintiffs. Those 32 representative students are Hillary Ross, Daniel L. Abner, Jared Grant Fields, Cory Leigh Doerhoff, Dana Caryl Doerhoff, Shelly Kay Doerhoff, Trisha Perry, Tamara D. McIntosh, Amy C. Tucker, Cole Sidwell, Brandi Lindsey, Robert Knodell, Tom Keeney, Samuel Dean Littlejohn, Aaron Stephens, Jennifer Elizabeth Reid, Walter Akers, Joshua Brian Boggess, Ashley Michelle Blissett, C. J. Harrison,

Darrin McIntyre, Danielle Stampley, Catie Whitaker, Chrissie Whitaker, Jered Yarber, Elizabeth Greene, Melanie Mays, Craig Letsinger, April Dawn Miinch, Zachary Rantz, Todd A. Nelson and Eric Doerhoff.

- d. Also joining as Committee Plaintiffs as taxpayers were two taxpayers from one of the Committee Plaintiff districts -- Daniel A. Ross and Danisse Ross.

2. Lee's Summit Plaintiffs:

- a. The 35 school districts, with their postal addresses shown in parentheses, included with the Lee's Summit Plaintiffs are the Bismarck R-V School District (Bismarck), Bolivar R-I School District (Bolivar), Bosworth R-V School District (Bosworth), Brookfield R-III School District (Brookfield), Brunswick R-II School District (Brunswick), Carl Junction R-I School District (Carl Junction), Eldon R-I School District (Eldon), Fort Osage R-I School District (Independence), Fredericktown R-I School District (Fredericktown), Hale R-I School District (Hale), Hannibal No. 60 School District (Hannibal), Hurley R-I School District (Hurley), Jefferson County R-VII School District (Festus), Laclede County C-5 School District (Lebanon), Lebanon R-III School District (Lebanon), Marceline R-V School District (Marceline), Moberly School District



(Moberly), Moniteau County R-I School District (California), Nodaway-Holt R-VII School District (Maitland), North Daviess R-III School District (Jameson), North Kansas City No. 74 School District (Kansas City), North Platte County R-I School District (Dearborn), Northwest R-I School District (House Springs), Northwestern R-I School District (Mendon), Platte County R-III School District (Platte City), Pleasant Hill R-III School District (Pleasant Hill), St. Joseph School District (St. Joseph), South Harrison County R-II School District (Bethany), Stockton R-I School District (Stockton), Sullivan C-2 School District (Sullivan), Union R-XI School District (Union) [the Union R-XI School District is also a party plaintiff in the Committee Petition], Warrensburg R-VI School District (Warrensburg), Webb City R-VII School District (Webb City), West Platte County R-II School District (Weston) and the Windsor C-1 School District (Windsor).

- b. The student Plaintiffs included within the Lee's Summit Plaintiffs are representative students at various grade levels from those school districts which have joined as Lee's Summit Plaintiffs. Those 19 representative students are Margaret K. Coleman, Meredyth N. Coleman, Nicholas R. Barnhart,

Weston A. Barnhart, Melanie A. Sims, Stephanie Sims, John D. Shrout, Beth Anne McDow, Jessica B. Stobart, Zachery P. Stobart, Sean M. Croucher, Patrick A. Brown, Mary Elizabeth Brown, Sara P. Dickens, Amy L. Dickens, Thomas Wallich, Scott Gerling, Brad Gerling and Theresa Gerling.

3. St. Louis Plaintiffs:

- a. The St. Louis City School District.
- b. Representative students at various grade levels from the St. Louis City School District joined as St. Louis Plaintiffs. Those five representative students are Timothy David Person III, Nicholas O. Sedey, Kathleen O. Sedey, David Lashbrook and Elizabeth Lashbrook.

4. Kansas City School District:

The Court finds that each of the Plaintiff school districts is a Missouri school district organized and existing pursuant to law; that the student plaintiffs are representative students in the various school districts; and that Daniel A. Ross and Danisse Ross are Missouri taxpayers.

Defendants:

1. The State of Missouri is a state of the United States and the General Assembly constitutes the Legislative Department of the State of Missouri. The Governor, Treasurer, Commissioner of Administration and Attorney General are officers of the State of



Missouri and possesses the powers and have the duties provided in the Constitution and laws of Missouri.

2. The State Board was created pursuant to Article IX, Section 2(a), of the Missouri Constitution, and under those provisions, the supervision of instruction in the public schools of Missouri is vested in the State Board. The office of Commissioner was created by Article IX, Section 2(b), of the Missouri Constitution, and under those provisions the Commissioner is the chief administrative officer of the State Board. The DESE is an executive department of state government created by Article IV, Section 12, of the Missouri Constitution.

Intervenor-Defendants:

1. Ladue School District (St. Louis County)
2. School of the Osage School District (Lake Ozark)
3. Pattonville R-III School District (St. Louis County)
4. Kirkwood R-VIII School District (St. Louis County)

The Court finds that each of the Intervenor-Defendant Districts is a Missouri school district organized and existing pursuant to law.

MA Educ Clause  
debated 1779-1780.  
Adopted 1780.

APPENDIX B TO MEMORANDUM  
OPINION AND JUDGMENT

HISTORY OF EDUCATION IN  
MISSOURI - A CHRONOLOGY

The Court will not attempt to catalog a complete history of the development of education and school finance in Missouri, but the following actions and items are noted in chronological order:

1775 Thomas Jefferson in his Notes on Virginia (Exhs. 507 and 402) proposes a system of education to "diffuse knowledge more generally through the mass of the people." Jefferson's plan envisioned a three-tiered system -- the common schools, grammar schools and then a university. He called for an "amendment to our constitution ... in aid of the public education," though such was not realized in Virginia until 1971 (Exh. 594). Jefferson wrote:

"By that part of our plan which prescribes the selection of the youths of genius from among the classes of the poor, we hope to avail the state of those talents which nature has sown as liberally among the poor as the rich, but which perish without use, if not sought for and cultivated. But of all the views of the law none is more important, none more legitimate, than that of rendering the people the safe, as they are the ultimate, guardians of their own liberty." (Exh. 507)

Jefferson proposed to the Virginia House of Burgesses "A Bill for the General Diffusion of Knowledge" (Exh. 508). That proposed a system of education "at the common expense of all" to children "without regard to wealth, birth or other accidental condition or circumstance." (emphasis added)

While Benjamin Rush proposed a national system of education which was never adopted, Jefferson proposed that each state would have a system of education for "the general diffusion of knowledge" -- a concept which would become implanted in the Constitutions of several states.

1812 The Act of Congress providing for the Government of the Territory of Missouri (2 U.S.Stat. 743) recognized the importance of education:



"... knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be encouraged and provided for ...."

1820

The Enabling Act of Congress (3 U.S.Stat. 545; March 6, 1820) authorizing the people of Missouri territory to form a constitution and be admitted as a state granted the sixteenth section of every township to the state for purposes of public education and also granted all salt springs, not exceeding twelve in number.

The Ordinance of Acceptance adopted at the Convention of the People of Missouri on July 19, 1820, accepted the grants of the sixteenth sections and the salt springs upon the terms specified by Congress.

The Constitution of 1820 recognized the importance of education by providing in Section 1 of Article VI:

"§ 1. Schools and the means of education shall forever be encouraged in this state; and the general assembly shall take measures to preserve from waste or damage such lands as have been, or hereafter may be granted by the United States for the use of schools within each township in this state, and shall apply the funds which may arise from such lands in strict conformity to the object of the grant; one school or more shall be established in each township as soon as practicable and necessary, where the poor shall be taught gratis."

The one school in each township provision carried forward the Jeffersonian concepts. (Exh. 402, p.7)

1822

Control of school lands transferred to the counties, where commissioners could rent or lease the school lands for up to five years and establish a common school fund. (Exh. 402, p.8)

1823

General Assembly replaced the county commissioners with township commissioners. (Exh. 402, p.8)

1831

Enactment provided that county governments could sell the sixteenth section in each township upon approval of three-fourths of the township's people. (Exh. 402, p.8)

1835

General Assembly abolished the township commissioners and delegated custody of the school funds to the county courts. Each township was designated a school district with a board of three trustees elected annually. A tax

of 3 1/3 cents per \$100 for schools was authorized if approved by a 2/3 vote, but it does not appear that any property taxes were ever levied under this provision. (Exh. 402, p.9; Exh. 81, p.26)

1837

General Assembly created a permanent fund for common schools, known as the "Common School Fund." The monies from the salt springs (the Saline Fund) which Congress had set over to Missouri in 1820 and Missouri's share of the 1836 distribution of the federal surplus became the foundation of the Common School Fund. (Exh. 402, p.9-10; Exh. 81, p.22-23)

1839

Geyer Act adopted. This Act, consisting of 276 sections, provided for "a comprehensive system of public schools at the elementary, secondary, and university levels ..., reflecting Thomas Jefferson's views on education." Exh. 402, p.4. A "State School Fund" was created to supplant the Common School Fund. Provision was made for a State Superintendent of Schools, school organization and fund administration. Among other provisions relating to funds, the State Superintendent of Schools was to supervise the distributions made from the State School Fund. Distributions were to be made when it reached \$500,000. Also, local school districts were authorized to levy a head tax upon its inhabitants. (Exh. 81, p. 23-24; Laws of Missouri, 1839, p.112)

1842

The first apportionment was made from the State School Fund. Apportionments continued to be made annually thereafter in generally increasing amounts, except during certain of the Civil War years and its aftermath. (Exh. 81, p.24, 28-29)

1853

Kelly Act adopted. This Act provided for setting aside one-fourth of the state's revenue for public schools, which continued until 1887. This was enacted because income from the State School Fund was not sufficient to provide the necessary funds for the growing number of children to be educated. (Exh. 81, p. 25-26; Exh. 402, p.11; Laws of Missouri, 1853, p.147)

1856

The first public high school in Missouri, at St. Louis, was dedicated on March 24, 1856. The dedicatory address was given by Charles D. Drake, who later was to become so instrumental in the formulation of the 1865 Constitution that it came to be known as the "Drake Constitution". Charles Drake, whose father Daniel Drake of Ohio had been a correspondent with Thomas Jefferson with respect to education, set forth in that address certain Jeffersonian concepts of education which were later to become ingrained into the Constitution of Missouri in 1865:



"The son or daughter of the rich can claim from it no readier entrance, no higher favor, no more lenient exemptions, than the offspring of poverty. The child of American parents has no more rights in it than the child of trans-marine birth. It is not the propounder or exponent of any party, creed, or sect; but educates, in the same way, and with rigid impartiality, the young of all parties, creeds and sects. Whatever distinctions society may recognize elsewhere, none, save those earned by talent and industry, are tolerated within the portals of the Public School." P.14-15 of Dedicatory Address contained within a collection of addresses of Charles Drake maintained by the State Historical Society of Missouri.

- 1864 Because of the decline of state support for public schools during the Civil War, the General Assembly authorized local districts to raise a maximum of \$150 in property taxes for the payment of teachers' salaries. With this enactment, the practice of using local property taxes to partially support schools began. (Exh. 81, p.26)
- 1865 1865 Constitution adopted which contained additional provisions making organic the Jeffersonian concepts of education. See Appendix C, infra, for text of those provisions, Constitutional Convention Education Committee Report and discussion.
- 1875 The provisions of the Education Article of the Constitution were again considered in the Constitutional Convention which formulated the 1875 Constitution. See Appendix C, infra, for the text of the provisions which were adopted, the debates and actions of the Constitutional Convention, and discussion.
- 1887 The General Assembly "appropriated out of the state revenue funds to be applied to the support of the public schools, one-third (1/3) of the ordinary revenue paid into the treasury for the years 1887 and 1888 ..." (emphasis added) Laws of Missouri, 1887, p.4. This practice was to continue through 1953. Exh. 81, p.29-33.
- 1905 Compulsory school attendance law adopted. Exh. 402, p.25.
- 1909 Special school aid law passed providing funds for teacher salaries for districts unable to finance an eight month school term, if size and assessed valuation requirements met. Act amended in 1911 and 1913 to apply to smaller

districts and to provide for higher salaries. Exh. 81, p.34-35.

1913

Special aid law for consolidated districts passed based on area of district. Act was amended in 1925 to change the basis of the state aid from district size to average daily attendance and number of teachers. The consolidation law also provided for state aid for one-fourth of the cost of a central building up to \$2,000 in state aid. Exh. 81, p.35-37, 46.

The General Assembly enacted a law devoting the monies from a tax on foreign insurance companies for free textbooks. Exh. 81, p.43-44. With certain amendments, this law has continued in effect to the current time.

1917

The General Assembly adopted legislation to accept the Federal program for vocational education, along with federal aid for that program. Exh. 81, p.44-45.

1919

First law enacted providing for state aid for special classes for handicapped students, i.e., now referred to as special education. Exh. 81, p.47.

1931

The General Assembly enacted a complete revision of the laws relating to state support and distribution of money for public schools. This came as a result of recommendations by a survey commission created by the General Assembly in 1929. The commission employed Dr. George D. Strayer and Dr. N. L. Engelhardt of Columbia University in New York, two prominent educators of the time, as directors of the survey commission.

The 1931 School Law guaranteed to each child a minimum of eight months of schooling each year. Two levels of apportioned state monies were provided. The First Apportionment Level guaranteed to each district by an equalization process a minimum amount of funds for each teaching unit. Teaching units were defined in terms of average daily attendance and teachers employed. The First Level also provided state funds for transportation and for high school tuition if the district did not maintain a high school. The Second Apportionment Level was based upon the kind of certificates and number of days of pupils' attendance during the preceding year. Included within the 1931 Act was also a provision which provided that if a consolidated district constructed a central building, it would receive \$1,000 for each building abandoned. Exh. 81, p.37-41, 46.

1941

By 1943 more funds were available than were needed to fund the two levels of the 1931 law. The General



Assembly increased the amount paid to districts under the Second Apportionment Level on the basis of teacher certificates and also adopted a Third Apportionment Level which would apply after the First and Second Apportionment levels had been fully funded. Funds under the Third Apportionment Level were apportioned on the basis of teacher units reported during the preceding year. Exh. 81, p.41.

1945 Adoption of the 1945 Constitution containing provisions guaranteeing "equal rights and opportunity" and free public education. See Appendix C, *infra*, for text of these provisions, the debates and actions of the Constitutional Convention and discussion.

1948 School Reorganization Law enacted. State aid for one-half of the cost of building and equipment, but not for more than \$25,000; maximum increased to \$50,000 in 1951. Exh. 81, p.46-47.

1955 Foundation Plan for State Financing of Public Schools adopted. A new state aid plan was adopted, which included an equalization formula. The formula provided for a multiplication of the number of pupils in a district based on average daily attendance times a fixed per pupil amount less the property taxes that would be raised by the local district applying a \$1.00 levy. Exh. 227. Revisions in the Foundation Plan were made in 1959, 1963, 1965, 1969, 1975 and 1976. See notes following Section 163.031, V.A.M.S.

1977 Revised Foundation Formula Adopted. The basic provisions included in the present Foundation Formula were adopted. See, House Bill No. 131, as adopted and approved.

1982 Law known as "Proposition C" providing for a 1¢ sales tax for public education with property tax rollback provisions adopted by the voters of Missouri.

1984, 1985  
and 1986 Revisions to Foundation Formula adopted by General Assembly. See notes following Section 163.031, V.A.M.S.

**APPENDIX C TO MEMORANDUM  
OPINION AND JUDGMENT**

**THE MISSOURI CONSTITUTIONS OF  
1865, 1875 AND 1945**

**PROVISIONS RELATING TO EDUCATION  
AND EQUAL OPPORTUNITY --  
TEXT, CONSTITUTIONAL CONVENTION DEBATES  
AND ACTIONS, AND DISCUSSION**

While the 1820 Missouri Constitution recognized and made provision for public education in Missouri, a consideration of the provisions of the 1865, 1875 and the 1945 Constitutions (including, as well, the Constitutional Convention Debates and actions) relative to education and equal opportunity lead this Court inescapably to the conclusion that education is a fundamental right in Missouri. Pertinent provisions and pertinent Constitutional Convention Debates are here set forth.

**1865 Constitution**

In 1864, the General Assembly authorized a calling of the Missouri State Convention which convened in St. Louis on January 6, 1865, and continued in session until April 10, 1865. Charles Drake was elected Vice-Chairman of the Convention, but his influence was much greater than the position would indicate. Drake had prepared a draft constitution prior to the Convention, and he was usually in control of the Convention proceedings. March, "Charles D. Drake and the Constitutional Convention of 1865," 47 Mo. Historical Review 110 (Jan. 1953).



Provisions were adopted in the 1865 Constitution making organic the Jeffersonian concepts of education. Those provisions, contained in Article IX, include:

"1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free schools for the gratuitous instruction of all persons in this state between the ages of five and twenty-one years."

\* \* \*

"3. The supervision of public instruction shall be vested in a board of education, whose powers and duties shall be prescribed by law. A superintendent of public schools, who shall be the president of the board, shall be elected by the qualified voters of the state. He shall possess the qualifications of a state senator, and hold his office for the term of four years, and shall perform such duties and receive such compensation as may be prescribed by law. The secretary of state and attorney general shall be *ex-officio* members, and with the superintendent, compose said board of education."

\* \* \*

"7. No township or school district shall receive any portion of the public school fund, unless a free school shall have been kept therein for not less than three months during the year for which distribution thereof is made. The general assembly shall have power to require by law, that every child of sufficient mental and physical ability, shall attend the public schools, during the period between the ages of five and eighteen years, for a term equivalent to sixteen months, unless educated by other means."

\* \* \*

"8. In case the public school fund shall be insufficient to sustain a free school, at least four months in every year, in each school district in this state, the general assembly may provide by law for the raising of such deficiency, by levying a tax on all the taxable property in each county, township or school district as they may deem proper."

\* \* \*

"9. The general assembly shall, as far as it can be done, without infringing upon vested rights, reduce all lands, moneys, and other property, used or held for school purposes in the various counties of this state into the public school fund herein provided for, and in making distribution of the annual income of said fund shall take into consideration the amount of any county or city funds, appropriated for common school purposes, and make such distribution as will equalize the amount appropriated for common schools throughout the state."



The Education Committee of the Convention, in its Report submitting proposed language for the Education Article (which language was in the main adopted), indicated the purpose and the reasons for the provisions:

"It will be readily admitted that the subject of general education is one of the most important that can engage the attention of those who desire the success and permanency of free institutions. All the constitutional safeguards which can be thrown around the liberty of the people will avail but little, unless the people themselves possess a sufficient degree of knowledge and intelligence rightly to appreciate the benefits of free government."

"In our own State, just emerging from the desolations and dangers of a terrible civil war, and throwing off the shackles of a system of domestic slavery, which paralyzed energy, discouraged enterprise, and proscribed the general diffusion of knowledge, it seems a most appropriate time to establish a system of public schools, which, in the munificence of its provisions, the comprehensiveness of its objects, shall make free Missouri a worthy pattern for all States that would carry the means of a good education to the door of every inhabitant, without distinction of race, of color, or condition."

\* \* \*

"The management of the affairs of the public schools is committed to a board of education, composed of three persons, two of whom are officers of the State Government, and the other is elected for the express purpose of superintending the affairs of these schools. This officer will be the president of the board, and will be mainly responsible to the public for the success of the system of free schools. He is to hold his office for four years ... because of the necessity of securing conformity and a general harmony of plan in the schools throughout the State, to insure efficiency ...."

\* \* \*

"Another feature of our plan is found in the attempt to secure an equal distribution of all funds held for purposes of common schools throughout the State. Your committee consider that it would be very advantageous to the cause of popular education, if local funds were, as far as possible, merged in the public school fund held by the State; but as this can not be accomplished without infringing upon vested rights, the equalization can only be secured by discriminating in favor of those sections of the State which have no public funds, so that the children in those sections will receive an amount from the State fund equal to the amount received by those favored with local funds. There seems to be a propriety in



this mode of distribution which needs no argument to commend it to all the friends of equal justice."

\* \* \*

"The great object to be secured is the education of every child in the State to that extent which is perhaps most generally understood by the phrase, 'a good common school education' while a higher degree of attainment ought to be, and will be, provided for all who desire it, under our system, when fully organized. Nothing less than this would deserve the name of popular education. To secure at least this degree of mental culture, provision is made for requiring attendance at the public schools of all children who are not otherwise instructed, ...."

\* \* \*

"We have thus endeavored to set forth, in general terms, some of the principles of the system of popular education, which is embodied in the article herewith submitted."

\* \* \*

"A careful and thrifty husbandry may pour into the marts of commerce, and into the granaries of every inhabitant of the State, abundant productions of our exuberant soil; capital and skill may secure, for our rich and exhaustless mines, returns of untold wealth; but, after all, the security of free institutions, and the honor and glory of a free commonwealth, will be found only in an intelligent and virtuous people." (emphasis added) Journal of the Missouri State Convention, March 29, 1865, p. 196-198.

That education was a basic liberty explicitly guaranteed by the Constitution was recognized by the Convention in the adoption of its Declaration of Rights. The "general, great, and essential principles of liberty" were extended to blacks in Section Three of the Declaration: "... no person, on account of color, could be disqualified as a witness, prevented from holding property, restricted in the exercise of religion, or be hindered in acquiring education ...." (Exh. 402, p. 17-18)

#### 1875 Constitution

The provisions of the Education Article of the Constitution were again considered in the Constitutional Convention which formulated the 1875 Constitution.

Pertinent provisions of the 1875 Constitution, as adopted, included:

Article XI:

"1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years."

"2. The income of all the funds provided by the State for the support of free public schools shall be paid annually to the several county treasurers, to be disbursed according to law; but no school district, in which a free public school has not been maintained at least three months during the year for which the distribution is made, shall be entitled to receive any portion of such funds."

\* \* \*

"4. The supervision of instruction in the public schools shall be vested in a 'Board of Education,' whose powers and duties shall be prescribed by law. The Superintendent of Public Schools shall be President of the Board. The Governor, Secretary of State and Attorney-General shall be *ex-officio* members, and with the Superintendent, compose said Board of Education."

\* \* \*

"6. The proceeds of all lands that have been, or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat from unclaimed dividends and distributive shares of the estate of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State, (if Congress will consent to such appropriation); also, all other grants, gifts of devises that have been, or hereafter may be made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a Public School Fund; the annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."



"7. In case the public school fund now provided and set apart by law, for the support of free public schools, shall be insufficient to sustain a free school at least four months in every year in each school district in this State, the General Assembly may provide for such deficiency in accordance with section eleven of the article on Revenue and Taxation; but in no case shall there be set apart less than twenty-five per cent of the State revenue, exclusive of the interest and sinking fund, to be applied annually to the support of the public schools."

Article IV:

"43. All revenue collected and moneys received by the State from any source whatsoever, shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. All appropriations of money by the successive General Assemblies shall be made in the following order:

*First*, For the payment of all interest upon the bonded debt of the State that may become due during the term for which each General Assembly is elected.

*Second*, For the benefit of the sinking fund, which shall not be less annually than two hundred and fifty thousand dollars.

*Third*, For free public school purposes.

*Fourth*, For the payment of the cost of assessing and collecting the revenue.

*Fifth*, For the payment of the civil list.

*Sixth*, For the support of the eleemosynary institutions of the State.

*Seventh*, For the pay of the General Assembly, and such other purposes not herein prohibited, as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated, or to give priority in its action to a succeeding over a preceding item as above enumerated."

William F. Switzer, who served as chairman of the Convention's Education Committee, explained the proposed Article on Education as reported by the Education Committee:

"It has been well and truthfully said by one of our great American statesmen [Thomas Jefferson] that at this day no public man comes up to the standard of a statesman who does not in his policy make broad and universal the diffusion of education among the masses of the people." (emphasis added) (Vol. IX, Debates of the Missouri Constitutional Convention, 1875, p.26)

\* \* \*

"To deduce a conclusion from the action thus far had of this body, the education of the people is to be interwoven with the very framework of the commonwealth. It is not to be left wholly to the ever changing whim and caprice of the Legislature, but is to be made organic and fundamental." (emphasis added) (Vol. IV, Ibid, p.27)

\* \* \*

"[T]he Committee was about unanimous in the conviction that we should present a system of education, a complete scheme, harmonious and consistent throughout, capable of growth and expansion ..." (emphasis added) (Vol. IX, Ibid, p.27-28)

\* \* \*

"The object of it [the provision re the State Superintendent of Public Schools and State Board] was, Mr. President to place the Superintendent of Public Schools or Board of Education, not only theoretically, but in fact at the head of the system." (Vol. IX, Ibid, p.31)

\* \* \*

"[Y]our Committee have presented these details of the system of education which ... will redound to the permanent prosperity and enduring glory of the people, a system which recognizes the free public school as one of the great forces of our civilization, as the elevating, assimilating organ of the body politic [sic] in parting unity and homogeneity to our diversified population a system which does not ignore the fact -- for fact it is, gentlemen -- that as a rule our most successful farmers, artisans and inventors, our largest manufacturers and merchants, our great statesmen, lawyers and law givers, jurists, doctors, orators and poets, come from the granite foundations of society, and starting in early life from the middle, and many of them from the lower classes of society they make their successful way through the common schools and through poverty, and finally reach the loftiest niche in the world's esteem; a system, likewise, Mr. President, which does not outlaw the intermediate by the higher education -- that rich and exhaustless fountain of knowledge which supplies the lower, and which, if it be dried



up, makes an arid and boundless waste in the whole field of knowledge." (Vol. IX, Ibid, p.53)

In the general debate that followed, Mr. Bradfield questioned whether the state could afford the cost to which Section 1 of the Education Article would commit the state. Bradfield noted that there were then 708,354 children in Missouri who were between the ages of five and 21, noted the per pupil educational costs in Massachusetts, Pennsylvania, New York, Illinois and Ohio, and pointed out that if any of those comparable costs were utilized in calculations there would be substantial costs for the State of Missouri:

"Now, I say in view of these facts are we prepared or ready to adopt the first section which pledges us to the support & maintenance of a system of education which will cost us more in dollars and cents every year than double the taxes we now pay for all state purposes." (emphasis added) (Vol. IX, Ibid, p.59)

Bradfield pointed out that even with the utilization of 25% of state revenues, interest on the School Fund and fines and forfeitures, the Legislature would probably have to raise more money to comply with the requirements of Section 1:

"Now supposing that the fines & penalties should be the same in future years, this fund, allowing twenty-five per cent upon the whole amount, including the revenue & state interest fund, and ten per cent upon all county funds, and the fines & penalties it would only yield annually the sum of \$1,027,127.23, and that would not be more than one fourth enough, according to the scholastic reports in other states to educate these 708,354 children in this State. Now three times that amount must be raised in some other way & manner before we can carry out the provisions of this first section in good faith, if we adopt it." (Vol. IX, Ibid, p.60)

\* \* \*

"My idea is we should adopt no system that we do not intend to carry out in good faith, and if it will cost the figures I have stated, taken from reliable data, then we are to consider whether or not we will in the adoption of this section pledge

the State & the Legislature to raise the necessary means to carry out such a system as we put down here." (Vol. IX, Ibid, p.61)

No modifications were made to Section 1 during the Convention deliberations, except with respect to the ages of children to be educated, nor were there any assertions advanced that the funding for education obligations imposed upon the state were limited to 25% of state revenues.

During the general debate, Mr. Brockmeyer observed:

"Duties are devolved upon our citizens by our form of government, and how are they to perform them, save & except as they receive intelligence sufficient to understand those duties? Whence do our laws come? They come from the hearts of the citizens. And how can we be expected to be capable of instituting good laws unless we are possessed of sufficient intelligence to understand what is best? Hence it is that the State uses its taxing power, for the purpose of supplying the conditions essential to the existence of our government. It cannot exist as a Republic without these conditions; and this, I fancy, was the meaning of the founders of the American nation, when they said that intelligence & virtue were the corner stone of the fabric they had raised." (Vol. IX, Ibid, p.71-72)

During the course of the Debates, motions to strike the obligation to "establish" free public schools and to strike the words "A general diffusion of knowledge and intelligence being essential to the people" were rejected by the Convention. (Vol. IX, Ibid, p.87, 91)

A Minority Report of the Education Committee by Mr. Todd proposed that Section 1 be amended so as to provide that only spelling, reading and writing in the English language, grammar, arithmetic, geography and the history of the United States be required to be taught at public expenses. (Vol. IX, Ibid, p.23, 102) Todd argued that without such a limitation, the State was



committing itself to a "system of education which ... begins ..., with the lacteal condition of the infant brain and terminates at no age of the minor; nor does it terminate in any grade of education, short of all the learning of the world, ancient and modern." (Vol. IX, Ibid, p.156-157) Notwithstanding Mr. Todd's repeated calls to limit the scope of the education to be afforded in the "free public schools", his proposed amendment was tabled and never revived. (Vol. XI, Ibid, p.242) Mr. Pulitzer in speaking against the minority report indicated -- "The gentlemen who want all these restrictions are very much afraid that the public schools of this State will teach too much. I am afraid they teach too little." (Vol. IX, Ibid, p.127) The expansive scope of the education to be provided in free public schools was therefore not limited.

The version of the Education Article reported to the Convention (Vol. VIII, Ibid, p.179-180) did not contain the specific "equalize" language that had been contained in Section 9 of Article IX of the 1865 Constitution, nor was there any specific discussion of that Section. From a consideration of all of the Debates, it is apparent though that the Convention did not believe that changed the duty of the state to afford and fund a statewide system of public schools so that every child, wherever he might reside in the State, would have equal educational opportunities.

The convention specifically rejected the concept that the support of public schools should be dependent on taxes raised in particular localities. Mr. Pipkin of Jefferson County proposed an amendment which would have provided that no more state monies could

be distributed to a county for education than the state taxes raised in that county. (Vol. IX, Ibid, p.135) Pipkin's amendment was never adopted. Mr. Halliburton, in speaking against the amendment spoke of what was implicit in the Education Article as formulated by the Convention -- and no one during the Convention challenged the correctness of the interpretation which he expressed:

"I had supposed that the business of this body was to establish a general school system, and not a local school system. I had supposed, and have ever believed, from all that I have heard, and read, that the theory was, that the school system was to be a general one, established and supported by the State, and that it was not for a state to attempt to build up for each locality, without consulting them, or regarding their interests, or condition, a local school system to be carried on by each county, in, and of itself. The whole theory upon which the public school system is carried on, as has been proclaimed here by gentlemen on various sides of the question, but who have, all agreed upon the main point, while they differ as to the modes of building up, is, that it is to the interest of the State, to make the children of the State intelligent ...."

\* \* \*

"I say, the proposition is, to abandon that system, and to compel a local taxation by each locality, for the purpose of educating its young. Now, Mr. President, we abandon the whole theory, and it at once becomes, so to speak, a despotism. The object of levying a tax, for the purpose of educating the young, is because a large proportion of the people, are too poor to furnish the means of educating their children."

\* \* \*

"Then the moment you abandon that theory, you abandon the whole idea, that the wealthy of the State should educate the poor, all that is abandoned, and the very argument offered by the member from Jefferson County, is an argument that the wealthy of the State should not educate the poor, but that the poor should be left to educate themselves."

\* \* \*

"The object is, that information should be as much diffused among all the people, as it is possible to diffuse it, and that each, and every member of society shall be raised and elevated as high upon the general plane of intelligence, as it is possible, thereby making society better, thereby, improving the State, and thereby you enable each individual the better to act and play his part in a republican government, where



each man is a sovereign, and each man exercises his proportion of the sovereign power of the republic at the ballot box."

\* \* \*

"Many localities are very poor, and what would twenty five percent of the county revenue amount to in one county, I mean per capita to the children that have to go to school or ten per cent, or five per cent in many counties would produce just as much per capita to each child, as twenty five per cent would in others, hence you see the absolute injustice of a proposition like that coming from the member from Jefferson. The whole theory is, that it is the duty of the State to provide for the public education of the children of the State, and if the State provides for it, then it is the duty of the State to pay their proportion, whether they send their children to school or not, but all of the people of the State should pay the amount, and that money should be spread broadcast like the dew of Heaven, throughout the whole State, for the benefit of the children of the State. The children of the State should have its benefits equally, without regard to whether they are children of the rich, or of the poor, whether a particular locality is a wealthy or a poor locality; the money is to be spread abroad equally, whether it is paid equally or not." (emphasis added) (Vol. IX, p.135-141)

And later in the debates when complaint was made that money would be taken from the wealthier areas of the State for school purposes, Mr. Fyan, a supporter of the provisions adopted, stated:

"The member from St. Charles complains that we want to take more from the wealthy counties of the State and give it to the poor counties. I would ask if the whole basis of the free-school system is not upon the idea that we ought to educate the poor children? If such is not the case I would like to know it." (Vol. IX, Ibid, p.255)

Further debate during the Convention reflected the concept that there should be a limit on local property taxes for school purposes and such provisions were adopted, but no limit on tax monies to be expended at the state level for the maintenance of a school system was adopted. As indicated by Mr. Bradford:

"There is no complaint in regard to State taxes; they are willingly paid; but they demand relief from the exorbitant local taxes, imposed in the name of education."

\* \* \*

"In other words, if the State does not mean to carry on, as a State, and provide for its support out of the revenues of the State, a common school system of education, then we should wipe the Article, on Education entirely out of the Constitution."

\* \* \*

"By the provisions of the Constitution already agreed upon, we have pledged the State, not the counties or school districts therein, to maintain and support a common school system. Let us make good that provision or strike the word education out of organic law."

\* \* \*

"On the issue presented, I am emphatically in favor of State education, or at least State aid. If it is not to be done out of the revenues of the State to some considerable extent, I am then in favor of striking out of the Constitution every section which recognizes the duty and necessity of maintaining a public school system in the State." (Vol. IX, Ibid, p.263, 264, 265, 266)

#### 1945 Constitution

The 1945 Constitution, as adopted provided, in pertinent part:

##### Article I:

"2. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design." (new text underscored)

##### Article IX:

"1.(a) A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law. Separate schools shall be provided for white and colored children, except in cases otherwise provided for by law. (new text underscored)<sup>1</sup>

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<sup>1</sup> The last sentence of Section 1(a) of Article IX was deleted by a Constitutional Amendment adopted in 1976.



"1.(b) Specific schools for any contiguous territory maybe established by law.

\* \* \*

"2.(a) The supervision of instruction in the public schools shall be vested in a state board of education, consisting of eight lay members appointed by the governor, by and with the advice and consent of the senate ...." (new text underscored)

"2.(b) The board shall select and appoint a commissioner of education as its chief administrative officer ... The board shall prescribe his duties and fix his compensation, and upon his recommendation shall appoint the professional staff and fix their compensation. The Board shall succeed the State Board of Education heretofore established, with all its powers and duties, and shall have such other powers and duties as may be prescribed by law." (new text underscored)

"3.(a) All appropriations by the state for the support of free public schools and the income from the public school fund shall be paid at least annually and distributed according to law." (new text underscored)

"3.(b) In event the public school fund provided and set apart by law for the support of free public schools, shall be insufficient to sustain free schools of at least eight months in every year in each school district of the state, the general assembly may provide for such deficiency; but in no case shall there be set apart less than twenty-five per cent of the state revenue, exclusive of interest and sinking fund, to be applied annually to the support of the free public schools." (new text underscored)

\* \* \*

"5. The proceeds of all certificates of indebtedness due the state school fund, and all moneys, bonds, lands, and other property belonging to or donated to any state fund for public school purposes, and the net proceeds of all sales of lands and other property and effects that may accrue to the state by escheat, shall be paid into the state treasury, and securely invested under the supervision of the state board of education, and sacredly preserved as a public school fund the annual income of which shall be faithfully appropriated for establishing and maintaining free public schools, and for no other uses for purposes whatsoever." (new text underscored)

Article III:

"36. All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:

First: For payment of sinking fund and interest on outstanding obligations of the state.

Second: For the purpose of public education.

Third: For the payment of the cost of assessing and collecting the revenue.

Fourth: For the payment of the civil lists.

Fifth: For the support of eleemosynary and other state institutions.

Sixth: For public health and public welfare.

Seventh: For all other state purposes.

Eighth: For the expenses of the general assembly." (new text underscored)

The provisions of the 1945 Constitution were formulated during the 1943-44 Constitutional Convention.

With respect to the "equal protection" provisions in Section 2 of Article I, Mr. Marr, the Chairman of the Convention's Committee on the Bill of Rights, explained that the new language derived from the Declaration of Independence. He went on to explain:

"It was the opinion of the Committee that we have gone as far in Section 4 [later became Section 2] as we can. We are aware of the fact that we cannot provide equality for different races by law, and neither can we provide social equality within races by law. Those are matters that have to be adjusted in other ways, and as far as we could go was to set out that men are created equal in the sense that they have equal rights and opportunities under the law ...." (P. 1423-24 of Transcript of Debates, April 6, 1944)



An amendment was proposed that the language of the New York Constitution indicating that "no person shall be denied the equal protection of the laws" be substituted for the new proposed "equal rights and opportunity" provisions because the new language might be construed too broadly, particularly in the area of social equality. P.1424-25 of Transcript of the Debates. After further debate, the substitution of the more limited "equal protection" language was rejected. Ibid, p.1437.

Mr. Alva Lindsay, Chairman of the Education Committee of the Convention opened the debate upon Section 1(a) of the Education Article by indicating that "... This is the definition of our free public school system." (Page 2321 of Transcript of Debates.) Another delegate, speaking in response to assertions that the state was spending more and more monies on the public schools while less monies were being raised from local sources, prophetically looked to the future:

"MR. OPIE: Mr. President, I think I have always been a conservative. I didn't like to see any money wasted for education ..., but I am going to tell you that we are writing a Constitution for many years to come, and we can't go by what we have done in the past or what we think we'd like to do, or what the cost is going to be. That is beyond our control. Other governments in this world, and there's (sic) many of them, are going all out on education, and the country that doesn't provide the highest class of education and every advantage, is going to be left to switch (sic) in a competitive way. I think we ought to support the report of this Committee and look to the future, because if we don't, the citizens of Missouri will be left ... [at the] switch (sic) in a competitive way." (emphasis added) (Ibid, p.2330)

Chairman Lindsay then joined back in the debate:

"This is not a school system of isolated districts. It's a state school system, and it's the state's obligation to see that we have a school system, and if the money doesn't come

from some other source, why, I never could see anything wrong with the state supplying the money."

\* \* \*

"Now, I'd like to say on behalf of the Committee that this particular section, I think was given more thought than any other section that we have proposed; primarily because it does affect the common system."

\* \* \*

"They [the Education Committee] have also compared it with the sections in all of the other Constitutions in the United States. I believe it's the feeling of the Committee that this is the best common school section in any Constitution in the United States, if it is adopted, the way it is now written." (emphasis added) (Ibid, p.2331)

In speaking in favor of the proposed language in Section 1 which was adopted, Mr. Meador, a member of the Education Committee, asserted in debate:

"Missouri should make provision for the equal education of all of the citizens in all parts of the state ... Therefore, this poor education that boys and girls get in certain isolated places of Missouri means poor citizens if education has any effect on citizenship in every county, city and state in the Union, because these people go there and they reside there as mature men and women. Therefore, Missouri should meet that challenge and provide as nearly as possible equal educational opportunities for every section of this state. We must take education to the boy or to the girl wherever we find them. Those people -- those children are not responsible for being born in a certain place or of certain parentage." (emphasis added) (Ibid, p.2333)

Delegate Richard Nacy, a well known Democrat and former State Treasurer, then moved to strike the first part of Section 1(a) -- the Jeffersonian language stating that "a general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people." (Ibid, p.2336.) V. E. Phillips, a member of the Education Committee, was "very much surprised" that delegate Nacy was "trying to eliminate from our fundamental document the immortal words of Thomas Jefferson ... the



duty of the state concerning the great subject of education of which Jefferson was so proud to be a founder." (Ibid, p.2336-37)

Education Committee Chairman Lindsay, in arguing against the Nancy Amendment, stated:

"I am not trying to support Tom Jefferson, the Democrat, but Thomas Jefferson as an American institution. I think these words serve a very useful purpose in declaring the policy of the state." (Ibid, p.2339)

Mr. Nancy's amendment was rejected, and the Jeffersonian language remains in our Constitution. (Ibid, p.2341)

**APPENDIX D TO MEMORANDUM  
OPINION AND JUDGMENT**

**THE CURRENT FOUNDATION  
FORMULA**

The Foundation Formula has undergone many changes and has become much more complex since its original adoption in 1955. The present Foundation Formula is but one of four components of the Missouri School Foundation Program. The Foundation formula itself contains five major components: (1) the minimum guarantee; (2) deductions from the minimum guarantee; (3) the guaranteed tax add-on; (4) the cost of education index (which is inoperable in the current formula); and the prior year constraints.

The components of the Foundation Formula are more fully hereinafter described. These components are reflected on a single page illustration which has been developed by the DESE (and revised periodically to reflect statutory changes) and which is commonly referred to as the "winged monster". A copy of the "winged monster" (without the change effected by 5 CSR 30-660.050 which became effective July 1, 1991) is as follows:



# STATE AID FORMULA

As Revised by "Proposition C"

(Data shown are simulated for illustration purposes only and do not represent actual formula factors)

Revised May 19

## MINIMUM GUARANTEE

1. (No. of Eligible Pupils) 1,050 x (75% of State Exp. Factor) \$1,735 = \$1,821,750
2. (AOC + Orphans) 84 x .25 x (75% of SEF) \$1,735 = 36,405
3. Minimum Guarantee (Line 1 plus Line 2) = 1,858,155

## DEDUCTIONS

4. Equalized A/V = \$20,000,000
5. Personal Prop. = \$10,000,000
6. & Util. A/V = \$13,000,000
7. Total Applicable A/V = \$43,000,000
8. x Income Factor (\$1.34 = \$1.206) = 100
9. Intangible Tax Receipts (57% of School Purposes) = 518,580
10. Fines, Forfeitures, and Escheats (57% of School Purposes) = 11,500
11. Sales Tax (57% of one half of Sales Tax Revenue) = 13,200
12. Total Deductions (Sum of Lines 4, 5, 6, and 7) = 110,700
13. Basic Entitlement (Line 3 minus Line 8) = 682,980
14. District Entitlement (Line 3 minus Line 8) = 1,105,205

## SUBMITTED TAX BASE (GTB) ADD-ON

15. (GTB) \$55,845 - (Dist. Applicable A/V per Pupil) \$40,953 = (24,892 ÷ 100 = \$246.92) x (Dist. Eq. Oper./Levy) \$2.74 = (57% of Pupil Weighted Levy x Income Factor) (\$1.34 x .9 = \$1.206) = \$78,775 x (No. of Eligible Pupils) 1,050 = 82,613.75
16. District Entitlement (Line 9 plus Line 10 x (C.O.E. 1.00) = 397,714
17. District Entitlement per Pupil \$1,517.07 - (Previous Year's Appointments per Pupil) \$985.91 = 531.16
18. 25% of Line 12 = \$172,795 + \$985.91 = \$1,110.70 x (No. of Elig. Pu.) 1,050 = \$1,174,635 (Limited Appointments)

HOLD HARMLESS PROVISION - During 1977-78, no district shall receive lower dollars per pupil in ADA than was received under Section 163.031, NSMO, during 1976-77. In 1978-79 and each year thereafter for five years, districts entitled to receive lower dollars per eligible pupil than was received in 1976-77 will have their appointments per pupil reduced annually by 20% of the difference between the amount they receive per eligible pupil in 1976-77 and the amount they are entitled to receive under the formula except no district shall receive in 1978-79 less than \$283 per eligible pupil.

In 1979-80 and each year thereafter the minimum base amount (\$283) shall be adjusted by the percent of change in the appropriation for the school foundation program except that the maximum annual percent adjustment shall not exceed the average percent of change in the number of dollars per eligible pupil received by the lowest 5% of the districts which are apportioned funds under subsections 1, 2, 3, and 4 of Section 163.031, NSMO.

The amount of the annual adjustment is determined by multiplying \$283 by the applicable percentage and adding the product to the amount per eligible pupil apportioned the previous year under the hold harmless provision.

Effective ratio is the highest of either the latest ratio or the average of the highest three of the previous four ratios.

Eligible Pupils - determined by adding the average daily attendance (ADA) of resident pupils the preceding year to one half of a two count membership taken on the last Wednesday in September and January and dividing the sum by two:  
ADA + Membership  
2

Districts may elect to use the number of eligible pupils for the last preceding year, the average number for the last three preceding years, or an estimate of the number for the current year.

The number of children on the rolls of Aid to Dependent Children - ages 5 to 17 years - who are enrolled in the public schools, as certified by the State Division of Family Services, plus the number of orphan children enrolled in the public schools.

Equalized Assessed Valuation is determined by multiplying reported assessed valuation of real estate and locally assessed railroad and utilities times .3333 and dividing the product by the effective ratio for the county.

Railroad and Utilities Status-Adjusted Valuation for each district is determined by prorating the assessment according to the portion of September membership in the county in each district.  
( District Sept Membership ) x  
( Sept Membership of County ) x  
(Valuation of state assessed railroad and utilities properties) x District railroad and utilities assessed valuation

Income Factor is determined by dividing the district average adjusted gross income per person by the state average adjusted gross income per person, adding one to the result and dividing by two.

State Tax Revenue results from an increase of one percent in the statewide tax. This revenue is earmarked for distribution to the public school districts of the State.

State Expenditure Factor is determined by dividing the state total current expenditures for the second preceding year by the total number of eligible pupils in the state during that year.

Weighting Factor applicable to AOC and orphan children eligible for consideration for state aid.

Pupil-Weighted Levy is determined by adding the product of the number of eligible pupils times the equalized operating tax levy for the second preceding year for each district and dividing the aggregate total by the number of eligible pupils for the state.

District Equalized Operating Levy is determined by multiplying the sum of the teachers, incidental, and building funds rates by the effective ratio for the county and dividing the product by .3333

Guaranteed Tax Base is the total equalized assessed valuation per pupil of the district containing a specified (90th) percentile of all pupils in the state from a ranking of districts of the state - ranked from low to high according to the total equalized assessed valuation per pupil.

Cost of Education (C.O.E.) is a proportional relationship between a statistically predicted teacher's salary for each district and a statistically predicted teacher's salary for the state.

NOTE: This formula does not affect district appointments for the following categories of state aid:

- Pupil Transportation Aid
- Vocational Education Aid
- Reorganized District Building Aid
- Exceptional Pupil Aid
- School Food Services Aid
- Full State Fund - OLB



(1) Minimum Guarantee (Section 163.031,1, RSMo)

The minimum guarantee is calculated by multiplying 75% of the state expenditure factor by the number of eligible pupils within the district. No rational reason exists for multiplying the state expenditure factor by 75%. The state expenditure factor is determined by dividing the state total of current expenditures for the second preceding year by the number of eligible pupils in the state during that year. Section 163.011(13). The number of eligible pupils in a district is determined by dividing the sum of the district's average daily attendance and membership count by two. Section 163.011(4). For each student age 5-17 who receives Aid to Dependent Children (ADC) or who is an orphan supported in whole or in part by philanthropic or state organizations, a school district receives an additional 25% of 75% of the state expenditure factor.

The minimum guarantee does not grant additional weighting, apart from ADC or orphan status, to students with social, medical or educational deficits.

(2) Deductions from the Minimum Guarantee (Section 163.031.2, RSMo)

The second component of the foundation formula consists of a series of four deductions from the minimum guarantee. The first deduction is calculated by multiplying 57% of the pupil weighted levy as adjusted by the district income factor for each \$100 of the equalized assessed valuation of the property in the district for the preceding year. The second deduction is



determined by multiplying the amount the school district receives for school purposes from fines, forfeitures and escheats by 57%. The third deduction is determined by multiplying the amount the school district receives for school purposes from intangible taxes by 57%. The fourth deduction is determined by multiplying one-half of the amount the school district receives pursuant to the Proposition C sales tax by 57%. Section 163.087.3. The amount of money a school district actually raises by local property is not based upon the equalized assessed valuation of property in the district, but instead is based upon the actual assessed valuation of the property in the district. No rational reason exists for multiplying each of the deductions by 57%. There is no deduction for tax revenues received by a school district from taxes levied to replace revenues lost because of the exemption of personal property of manufacturers, refiners, distributors, wholesalers and retail merchants establishments pursuant to Article X, Section 6, of the Missouri Constitution.

The pupil-weighted levy represents the state-wide average tax rate for the second preceding year. The income factor is determined by taking one-half of the sum of 1.0 and the ratio of the school district's adjusted gross income per tax return to the state adjusted gross income per tax return. The income factor does not recognize individuals who do not file tax returns, such as the elderly and poor. Thus, the income factor is inflated in school districts which have a substantial number of elderly and poor residents and does not accurately reflect the income of residents

of the districts or their ability to pay local taxes. By weighting the deductions at 57%, the foundation formula reduces deductions for districts which have greater wealth and more ability to finance their schools.

(3) Guaranteed Tax Base Add-on (Section 163.031.3)

The third component of the Foundation Formula is the guaranteed tax base (GTB) add-on. The GTB add-on provides that districts with equalized assessed valuation per pupil below a specified level can receive additional state funds, depending on their local tax levy, as if they actually had the guaranteed amount of local district wealth. Essentially, each district is treated as if its assessed valuation per pupil were at a level of the 90th percentile of all pupils in the state from a ranking of districts of the state from lowest to highest according to equalized assessed valuation per pupil. The GTB add-on is calculated by taking the GTB less the equalized assessed valuation per eligible pupil of the school district for the last year and dividing by one hundred. Section 163.031(3). This figure is then multiplied by the difference obtained from subtracting 57% of the equalized pupil-weighted levy, as adjusted by the district income factor, from the equalized operating levy for the district. Id. The final product is then multiplied by the number of eligible pupils in the district to obtain the total amount of funds a district is entitled to as an add-on.

If fully funded, the formula's GTB add-on would assure that districts with equalized assessed valuation per pupil below



the 90th percentile would receive additional state funds as if it actually had the same property tax base as the 90th percentile in the state. However, the GTB add-on distorts equity by failing to equalize the assessed valuation of all districts to the assessed valuation of the wealthiest district in the state.

(4) Cost of Education Index

The combination of the minimum guarantee, deductions and guaranteed tax base add-on is known as the "district entitlement." Section 163.031.4 provides that the district's entitlement shall be multiplied by the cost of education index for each school district as determined by the Department of Elementary and Secondary Education. The cost of education index is defined as the proportional relationship between predicted average teacher salaries for each district and the average teachers' salaries for all school districts in the state. The statistical procedure for determining each district's cost of education index is set out at 5 CSR 30-660.030. However, Section 163.031.4 also provides that the amount of money allocated pursuant to the cost of education index in any subsequent year will equal the ratio existing between the monies allocated pursuant to the cost of education index and the total amount of monies as if distributed pursuant to Section 163.031.4 in the first year the cost of education index is applied. In the first year the cost of education index was applied, the cost of education index was set at 1.0. Therefore, the formula's cost of education index has always been set at 1.0 for each district

regardless of actual differences in the cost of providing education and, thus, has been inoperative.<sup>2</sup>

(5) The Prior Year Constraint

The prior year constraint limits each district's annual foundation formula receipts per student to the amount of formula aid the district received in the prior year plus a percentage of the difference between the district's entitlement and the amount of formula aid it received in the prior year. The calculation is easiest presented as follows:

$$\text{Aid} = \text{Prior Year Aid} + x\% (\text{Entitlement} - \text{Prior Year Aid})$$

The state's failure to fully fund the entitlement portion of the formula causes the percentage number (x) to be quite small. Over the past five years, the percentage number has averaged 2% and, in two of those years, the percentage number has been negative. As a result, each district's annual receipts per student are comprised largely of the amount the district received in prior years. The impact of the prior year constraint is demonstrated by the fact that approximately 80% of the Foundation Formula aid received by Missouri school districts in 1991-92 is determined by their receipts in 1986-87.

(6) Provision of Base Amount of Aid for Wealthy School Districts

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<sup>2</sup> Even if the cost of education index were operative, the Court finds from the evidence that at this time it does not properly and accurately measure or determine a cost of education. For example, one of the factors considered is the average county teacher salary. If salaries are low because of a lack of resources in the districts in the county, then the application of such a factor perpetuates the inequality. The factor based upon state income tax data does not reflect per capita income in the county. Other factors are also flawed.



Each school district qualifies for a minimum amount of foundation formula aid per pupil regardless of local wealth and regardless of the amount to which the school district is entitled through the Foundation Formula. Section 163.031.6(1). In 1978-79, the base figure was set at \$283.00 per eligible pupil and has been subject to a slight adjustment annually. This base dollar amount is provided to school districts regardless of need and diverts limited funds from more needy to less needy districts.

**APPENDIX E TO MEMORANDUM  
OPINION AND JUDGMENT**

**ADDITIONAL FINDINGS WITH RESPECT  
TO INEQUITIES, LOCAL EFFORT  
AND STUDENT NEEDS**

1. One could expect, of course, that the citizens of poor school districts with less fiscal capacity would have less disposable income and wealth to provide for education, yet, the statistics show that in Missouri those persons in districts with the least capacity, in fact, put forth greater effort than those persons in the most affluent districts.

2. The best measure of local fiscal effort to support the schools is simply to determine the ratio of local and county revenues as a percentage of wealth (equalized assessed valuation of property). Using this method, the evidence indicates the richest districts (containing over 40,000 pupils) put forth 3.08% effort, while the poorest districts (containing over 40,000 pupils) put forth 3.436% effort. The average for the state was 3.986%.

3. An increase by those poorest districts to raise local tax effort to the state average local tax levy would increase their funding by only \$115 per pupil, while an increase in effort to the state average of those richest districts would reward them with an average of \$785 per pupil. Thus, increases in effort by the poor, with corresponding increases by the rich, would merely mire the poor into deeper levels of revenue inequalities.

4. Simple comparisons of the actual operating levies of the districts cannot be relied upon as the true measure of willingness



of local school districts to tax themselves in support of schools. The statutorily imposed roll-backs pursuant to Proposition C reduce the rates in school districts with low assessed property valuation in greater magnitude than districts with higher equalized assessed property valuation. Because the roll-backs are statutorily imposed and draw down the tax rates of the poor disproportionately to the rich, the appearance is falsely conveyed that the poor put forth less effort of their own volition.

5. Even if one assumes that the bare operating tax levy of the school districts truly reveals the local taxpayers willingness to pay for schools, the data show there is no significant correlation (0.06074), positive or negative, between operating tax levies and the equalized assessed valuation of property for all the school districts. Moreover, disparities in expenditures per pupil among school districts are influenced to a much greater extent by local wealth than by local tax rates.

6. The Intervenor-Defendants (Exhibit 803, page 2, No. 2) erroneously assert that:

"'Real' differences in educational resources among public school districts in Missouri, while much smaller than dollar differences, result principally from the tax rates which school district residents are willing to impose upon themselves. School district wealth (as measured by the amounts of assessed valuation for each student enrolled) and the income levels of school district residents, play relatively minor roles in determining these differences."

The Court finds that evidence tending to support that assertion is not credible. A simple correlation between the current expenditures per pupil and the equalized assessed valuation of

property per pupil for all school districts reveals a significant correlation of 0.51610. The correlation between current expenditures per pupil and operating tax levies is substantially less, 0.38638.

7. Thus, the Court finds the following with regard to local tax effort:

First, the poorest school districts (containing over 40,000 students) put forth greater effective tax effort than do the richest school districts (containing over 40,000 students), but both have lower effort than the state average.

Second, an increase in tax effort by both the richest and the poorest would merely exacerbate the wide revenue disparities that now exist.

Third, when all school districts are considered there is no significant correlation, positive or negative, between wealth as measured by equalized assessed valuation of property and operating tax levies.

Fourth, total current expenditures per pupil are influenced to a greater extent by wealth, as measured by equalized assessed valuation of property, than by operating tax levies of the districts.

Thus, it cannot be maintained that the poor bring their fiscal plight upon themselves. In the poorest districts the tax effort is greater than in the richest, and among all districts there is no correlation between wealth and operating tax levies. The level of funding is, therefore, primarily dependent on the happenstance and incidence of local wealth and not on local willingness to pay for education.

8. Educational needs or burdens are greater in the poorest districts than in the richest. The richest school districts in Missouri have a lower dropout rate (3.669%) than the poorest school



districts. The dropout rate for the poorest districts is 5.892%. In this analysis, neither the richest nor the poorest contain St. Louis or Kansas City, both of which have exceedingly high percentages of dropouts influencing the state average of 6.655%.

9. If educational needs are measured in terms of percentages of AFDC (Aid For Dependent Children), the poorest districts are found to have 15 times the burden of the richest school districts. The percentage of AFDC children found in the richest districts is only 0.846% while the rate in the poorest districts is 12.903%. The state average which again is greatly influenced by St. Louis and Kansas City, is 10.028%. Some of the poorest school districts have extraordinarily great educational burdens. For example, 48.5% of the students in Hayti R-II School District and 32.8% of the students in Caruthersville School District 18 are classified as AFDC. Among the richest school districts the greatest burden is found in Westran with only 4.8%; Ladue and Parkway have a mere 0.53% and 0.24%, respectively.

10. The poorest school districts have the greatest educational burdens, and the state system of funding provides them with far less revenues to redress these needs. The Court heard moving testimony from the Superintendents of the St. Louis School District, the Wellston School District (a relatively small school district in St. Louis County with a student population that is entirely black<sup>3</sup>), the Greenville R-II School District in Wayne

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<sup>3</sup> While millions have been spent on desegregation funding in Missouri, the Wellston School District, which has the only entirely black student population in Missouri, receives no monies from the desegregation funding which comes as a result of the Federal Court decisions. Clayton, however, accepts a limited number of black

County and the Caruthersville 18 School District about the educational deficits and the problems faced in providing educational opportunities to poor, disadvantaged children in the inner city, in the rural Ozarks and in the Bootheel. The Court finds that this testimony was credible and that it cannot be disregarded. As indicated in testimony, the major difference between the inner city and rural poverty areas is that in the rural areas there is simply more space between where people live. The Court finds the testimony of Dr. Alfred Hess and others that there are more costs associated with the education of disadvantaged or "at risk" children credible.

11. The great variations in wealth and the corresponding disparities in revenues result in the poorest districts having more inadequate educational programs than the richest districts.

12. According to the state curriculum classification system<sup>4</sup> all of the richest districts are classified as Class 3, AAA, while only 13% of the poorest school districts are classified as Class 3, AAA. Seventy-eight percent of the poorest school districts are in

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students on transfer from the City of St. Louis, receives desegregation monies from the State which on average for every student in the district amounts to \$1,036 per student -- an amount which is more than the desegregation funds received on a per pupil basis for every student in the St. Louis School District. The amount of desegregation funds received by Pattonville for every student in its district is \$654, by Ladue for every student in its district is \$595 and by Kirkwood for every student in its district is \$472.

<sup>4</sup> The State Board has adopted the Missouri School Improvement which is now being phased in to replace AAA, AA and unclassified categories. Schools which are now classified AAA will find it to be more difficult to meet the new standards. Obviously, the State Board has concluded that the AAA, AA and unclassified ratings are inadequate, out of date and do not reflect the standard which the State Board has determined to be required in Missouri. From the evidence which the Court has heard, the Court finds that there are many school districts which have an AAA rating but which on closer examination do not in fact meet the technical requirements for an AAA classification. The Court further finds that simply because a school district has an AAA classification does not mean that students in that district are being provided equal educational opportunities nor that they are being provided adequate educational opportunities.



Class 2, AA, and 9% are in Class 1, A. Thus, according to this official rating scale the quality of the programs in the richest districts far exceed those of the poorest.

13. Three curriculum studies conducted by the Committee Plaintiffs indicate a consistent pattern that the richest districts have a more enriched curriculum and have higher percentages of students attending courses of a more academically enriched nature. In a survey of 30 high schools in rich and poor school districts of differing sizes it was found that the richest school districts offered substantially more higher level academic courses and more academic electives. In a second survey it was found in 66 course comparisons between high schools in rich and poor districts of various sizes that in 59 of the comparisons the rich districts had a higher percentage of students enrolled in academically enriched courses. In a third study, using Missouri Department of Education data of 72 course comparisons between high schools in rich and poor school districts, it was found in 60 of the comparisons that the rich districts had higher percentages of children enrolled in academically enriched courses.

14. These studies revealed that not only was there a disparity in curricular opportunities between rich and poor, but the data further suggested that educational programs generally among all districts in Missouri may be inadequate or at best only marginally adequate. This conclusion of suggested inadequacy is borne out by Exhibit 39 produced by the U.S. Department of Education showing Missouri ranks 44th among the 50 states in number

of Advanced Placement (AP) courses and the percentages of students taking those courses. These data flatly contradict the generalized assertion by the Defendants in Exhibit 803, p.1, No. 1 to the effect that:

"Even though its dollar expenditures for public education are relatively small, it is able to purchase large amounts of public education. Missouri purchases more public education with less money than most other states in the United States."

15. The Court finds that the system of public school finance in Missouri creates inequalities of educational opportunity by providing substantially greater revenues to the more privileged students who attend public school in the wealthiest school districts.

16. The Court finds that school districts with greater access to resources from assessed valuation per pupil are able to offer their students the following educational advantages over students in relatively poorer districts (Mueller testimony; Exhibit 85):

- a. better paid staff, higher staff/pupil ratio, investment in extensive staff development programs and opportunities, less staff turnover, and improved ability to attract staff with better credentials and experience;
- b. more courses and services, smaller class sizes, more specialists to supplement the classroom teacher, more experiences for the more able students, better and more current textbooks, better libraries, more instructional supplies and materials, more specialized services, and more programs for students at-risk;



- c. more specialized district-level administrative support, full-time principals in each building and additional supervisory personnel in both instructional and non-instructional areas;
- d. higher operating costs, better maintained, newer or newly retro-fitted facilities and equipment.

**APPENDIX F TO MEMORANDUM  
OPINION AND JUDGMENT**

**ADDITIONAL FINDINGS WITH RESPECT TO  
THE AMOUNT OF SCHOOL FUNDING  
IN MISSOURI**

1. The General Assembly has enacted a statutory scheme of school financing in Section 163.131, RSMo., which provides a formula for calculating the amount of state aid necessary to fund the public schools. However, the General Assembly has never allocated sufficient revenue to adequately fund the statutory scheme of school financing contemplated in Section 163.031, RSMo., and currently funds approximately 40% of the amount calculated pursuant to Sections 163.031.1 through 163.031.4 (Alexander testimony). If one assumes that the formula sets forth a determinant of funding needs for schools in Missouri, then there would be an unmet need for over \$800 million in funds.

2. From 1978 to 1990, the amount of minimum guarantee distributed to districts has barely kept pace with the Implicit Price Deflator and has fallen behind Missouri's state tax revenues. Over that same period, the total amount of state funds actually distributed to districts has barely kept pace with the Implicit Price Deflator and has fallen behind the State's tax revenues. Furthermore, the total amount of state expenditures over that period has decreased steadily, thereby forcing local districts to assume the funding burden. A relatively large percentage of school districts has fallen further and further behind in the terms of purchasing power per pupil due to a lack of sufficient state



educational funding. The result has been that a system of free public schools has not in fact been maintained. Testimony of Dr. Phares; Exhibits 624, 625.

3. There is a lack of sufficient funding for education in the State of Missouri. During the period from 1978 through 1990, 34.5% of the school districts in the state received zero or negative increases in all state monies per eligible pupil or increases that did not keep pace with inflation. During the same period, 41.8% of the school districts in the state received zero or negative increases in the minimum guarantee per eligible pupil or increases that did not keep pace with inflation. During that same period, 33.0% of the school districts in the state received zero or negative increases in the amount of current expenditures per eligible pupil or increases that did not keep pace with inflation. Testimony of Dr. Phares; Exhibit No. 623.

4. As a result of the General Assembly's failure to allocate sufficient revenues to maintain the public school system of the State of Missouri, many of the Plaintiff school districts have been forced to narrow the breadth of the districts' curriculum and extra-curriculum programs, are not able to maintain competitive salaries and other benefits for its employees, cannot afford the personnel necessary to provide such essential services as guidance counselors, nurses, social workers, teacher aides, or other needed support personnel, and are not able to maintain a reasonably low pupil-teacher ratio.